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ALEXANDER L. STEVAS,
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No. ———

IN THE

Supreme Court of the United States

October Term, 1983

IN THE MATTER OF WILLIAM CHARLES HOFFMAN,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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QUESTIONS PRESENTED

1. Are disciplinary proceedings against Attorneys quasi-criminal or quasi-civil?
2. What substantive and procedural rules apply in such proceedings; criminal or civil?

PARTIES TO THE PROCEEDING

The parties to this proceeding are William C. Hoffman, Attorney, the Minnesota Supreme Court, the Minnesota Lawyers Professional Responsibility Board and the Minnesota Attorney General. The Minnesota Civil Liberties Union was Amicus Curiae in State Court on behalf of Mr. Hoffman.

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IN THE

Supreme Court of the United States

October Term, 1983

No. ————

IN THE MATTER OF WILLIAM CHARLES HOFFMAN,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

The Petitioner, William Charles Hoffman, respectfully requests that a Writ of Certiorari be issued to review the Amended Order of the Minnesota Supreme Court which dismissed this action on February 16, 1983.

OPINIONS BELOW

The Findings of Fact, Conclusions of Law & Recommendation of the Referee, as well as the Amended Order of the Minnesota Supreme Court, both unpublished, appear in the Appendix.

JURISDICTION

The Amended Order of the Minnesota Supreme Court dismissing this action was dated, and entered, on February 16, 1983, and this Petition for a Writ of Certiorari was

filed within 90 days of that date. The United States Supreme Court's jurisdiction is invoked under 28 U.S.C., Section 1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Code, Constitution Amendments:

1. Fifth Amendment of the United States Constitution.
2. Sixth Amendment of the United States Constitution.
3. Seventh Amendment of the United States Constitution.
4. Eighth Amendment of the United States Constitution.
5. Fourteenth Amendment of the United States Constitution (Due Process Clause).

See Appendix for text.

STATEMENT OF THE CASE

In 1978, the Petitioner was retained by one, Robert Clock, to represent him in a Minnesota Workers' Compensation case. On January 4, 1979, the Petitioner had an office consultation with a Doctor Coleman J. Connolly in regard to the case, and on February 28, 1979, at the Petitioner's request, Doctor Connolly testified at the compensation hearing. Subsequently, Doctor Connolly sent a bill for his services to the Petitioner in the amount of $575.00. The bill was paid at the conclusion of the case on September 24, 1980.

On April 3, 1980, prior to receiving payment, Doctor Connolly wrote to the Ramsey County Ethics Committee with regard to his bill. The Petitioner was informed of Doctor Connolly's complaint by the Ethics Committee, and responded to the complaint by writing two letters to a member of the Committee.

On October 29, 1980, the Lawyers Professional Responsibility Board sent a Warning letter to the Petitioner, advising him that if he did not accept the Warning, he could have a hearing before a panel of the Lawyers Professional Responsibility Board, but he then must respond to five allegations set out against him in the Warning letter.

On October 31, 1980, the Petitioner wrote to the Lawyers Professional Responsibility Board and demanded a panel hearing, but refused to respond to the allegations because the Rules on Lawyers Professional Responsibility did not require a response.

On December 17, 1980, the Lawyers Professional Responsibility Board wrote to the Petitioner and reiterated their position, and on December 19, 1980, the Petitioner wrote to the Lawyers Professional Responsibility Board and reiterated his position and the basis for it.

On December 31, 1980, the Lawyers Professional Responsibility Board served two complaints upon the Petitioner, one pertaining to Doctor Connolly's bill, and the other pertaining to the Petitioner's refusal to respond to the five allegations. At the same time, the Lawyers Professional Responsibility Board informed the Petitioner that the panel hearing was set for January 16, 1981 and that they had set a pre-hearing conference in their office for January 8, 1981.

On January 2, 1981, the Petitioner wrote to the Lawyers Professional Responsibility Board and advised them that he would not attend the pre-hearing conference because the Rules on Lawyers Professional Responsibility did not provide for such a hearing, but that he would be at the panel hearing on January 16, 1981.

On January 5, 1981, the Petitioner served a subpoena duces tecum on Doctor Connolly.

On January 6, 1981, the Lawyers Professional Responsibility Board sent to the Petitioner a copy of an Order from the disciplinary case of Jack F. C. Gillard which was signed by the Minnesota Supreme Court on January 19, 1977 and which stated that disciplinary proceedings are civil and not criminal in nature.

On January 12, 1981, the Lawyers Professional Responsibility Board prepared two additional complaints against the Petitioner, one pertaining to the Petitioner's failure to attend the pre-hearing conference, and the other pertaining to the subpoena duces tecum which had been served on Doctor Connolly. The Petitioner was not advised of these two additional complaints until the day of the panel hearing.

On January 16, 1981, the panel hearing was convened, and the Lawyers Professional Responsibility Board called the Petitioner as their first witness. The Petitioner refused to testify, contending that the proceedings were quasi-criminal, that there were no rules which required him to testify, and that a United States Supreme Court case supported his position. He also contended that he had certain rights under both the United States Constitution and the Minnesota State Constitution and that he could not receive a fair hearing before the panel. (Transcript of

panel hearing). The panel disagreed with the Petitioner and certified the case to the Minnesota Supreme Court for discipline.

On April 7, 1981, a Petition for Disciplinary Action, consisting of five complaints, was served by mail upon the Petitioner. The fifth complaint pertained to the Petitioner's refusal to testify at the panel hearing. On April 24, 1981, the Petitioner served his Answer and Affirmative Defenses upon the Lawyers Professional Responsibility Board.

In his Answer and Affirmative Defenses, the Petitioner alleged that disciplinary proceedings are quasi-criminal in nature and cited the United States Supreme Court case of *In re Ruffalo*, 390 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2nd 117 (1968). He also alleged violation of the Due Process clause of the Fourteenth Amendment of the United States Constitution, violation of the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and the Eighth Amendment of the United States Constitution, as well as violation of similar sections of the Minnesota State Constitution. He further alleged that he should be accorded all of the rights and privileges accorded to anyone accused of a crime, namely the rights to remain silent, to be presumed innocent, to have guilt established beyond a reasonable doubt, and to have a jury trial.

The case was heard by Referee Gerald J. Wolf on May 11th and May 12, 1982, and on December 29, 1982, he filed his Findings of Fact, Conclusions of Law and Recommendation with the Minnesota Supreme Court. The Referee decided that the Petitioner was not guilty of any of the charges made against him, but he made no determinations as to the questions of whether disciplinary proceedings

against attorneys are quasi-criminal or quasi-civil in nature, whether such proceedings violate any portions of the United States Constitution or the Minnesota State Constitution, or what rights and privileges an accused attorney has.

On December 30, 1982, the Lawyers Professional Responsibility Board wrote to the Minnesota Supreme Court, and in their letter, they moved the Court to dismiss their Petition for Disciplinary Action.

On January 7, 1983, the Petitioner mailed an Answer to Motion of Director to Dismiss to the Minnesota Supreme Court, alleging therein that he was entitled to due process under both the United States Constitution and the Minnesota State Constitution and dismissal of the case would violate his rights to due process, and that the matter of whether disciplinary proceedings are quasi-criminal or quasi-civil had not been decided by the Referee, and he, as well as all attorneys, were entitled to have this matter decided.

On February 16, 1983, by an Amended Order, the Minnesota Supreme Court dismissed this case without comment.

ARGUMENT

In the case of *In re Ruffalo,* id, 1226, this Court, the United States Supreme Court, clearly and concisely stated that disciplinary proceedings against attorneys are "adversary proceedings of a quasi-criminal nature."

In 1977, the Minnesota Supreme Court, in an unpublished Order in the disbarment case of Jack F. C. Gillard, stated that disciplinary proceedings are "civil and not criminal in nature". (See appendix). *In re Gillard,* 271 N.W.2d 785.

In 1979, in the case of *In re Hanratty,* 277 N.W.2d 373, 376, the Minnesota Supreme Court held that disciplinary proceedings against an attorney are not criminal in nature and constitutional criminal safeguards do not apply.

In 1982, in an unpublished Order on Motion in a disciplinary action against one, P. R. S., a Minnesota attorney, the Referee assigned to hear the case stated that disciplinary proceedings are "civil actions". (See appendix).

On March 25, 1983, in the case of *In re Peters,* unpublished, the Minnesota Supreme Court cited the *In re Hanratty* case, id, and also set out the following statement from the case of *Hepfel v. Bashaw,* 279 N.W.2d 342, 348 (1979): "Moreover, we noted that our holding in that situation was not precedential in other "*civil*" cases."

What we presently have is a situation where the Minnesota Supreme Court is deciding cases on a basis that is in conflict with what the United States Supreme Court has expressly stated and held.

The Minnesota Supreme Court has adopted Rules on Lawyers Professional Responsibility. These Rules provide for a Board, a Director, and panels. (App. 67 Rule 1 (1), (3), (8)). The Board advises and assists the Director in the performance of his duties. (App. 67 Rule 4 (c)). The Director is responsible and accountable to the Board as well as to the Minnesota Supreme Court. (App. 67 Rule 5 (b)). Panels are made up of members of the Board. (App. 67 Rule 1 (8)). Matters for discipline are submitted to panels. (App. 68 Rule 8 (4)). A matter submitted to a panel is conducted in accordance with the Minnesota District Court Rules of *Civil* Procedure. (App. 68-71 Rule 9 (a), (b), (c), (d), (e), (f), (g), (h)).

If a Petition for Disciplinary Action is filed with the Minnesota Supreme Court, the Court may appoint a referee to conduct a hearing. (App. 72 Rule 12 (a), Rule 14 (a)). A hearing before a referee is conducted in accordance with the Minnesota District Court Rules of *Civil* Procedure. (App. 72 Rule 14 (b)).

If an attorney is accused of wrongdoing, and then is completely exonerated in a disciplinary proceeding, his conduct, which was the basis for that disciplinary proceeding, can again be considered in a subsequent disciplinary proceeding brought against him. (App. 73 Rule 19 (b) (1)).

An attorney who is being investigated must cooperate with the Board, the Director, and the panel assigned to hear his case. He must give them papers, documents and tangible objects which they ask for, as well as a full and complete written explanation of the matter being considered. He must also appear at conferences and hearings that they set. (App. 74 Rule 25 (a) (1), (2), (3)). If the attorney fails to do any of the above, he is guilty of unprofessional conduct which constitutes grounds for discipline. (App. 74 Rule 25 (b)).

On the Lawyers Professional Responsibility Board's stationary are listed all members of the Board, those members making up any panels, as well as the Director and his staff. (See Appendix).

An attorney found guilty in a disciplinary action can be disbarred, suspended indefinitely, suspended for a specific period of time, ordered to pay a fine, ordered to pay costs, be placed on probation, be reprimanded, or the Minnesota Supreme Court can make any other disposition which it deems appropriate. (App. 73 Rule 15 (a)). In the cases

of *In re Hanratty*, id, 376 and *In re Shaw*, 298 N.W.2d 133, 135 (1980) the attorneys were each fined $5,000.00.

There are a number of questions to be asked in the present case. Did this Court mean what it said in the *In re Ruffalo* case, id, or didn't it? If it did, what substantive and procedural rules apply to disciplinary proceedings?

Why should an attorney who is accused in a disciplinary proceeding, and who can lose his good name and his means of making a living, be entitled to less rights than another citizen of the United States who is merely accused of something that can only result in a minuscule fine, probation, or a minimum time in jail?

Why should an accused attorney have to cooperate with the Lawyers Professional Responsibility Board, when that Board, in reality, is the investigator, accuser, prosecutor and trier of him?

What is the degree of proof necessary to convict an attorney accused in a disciplinary case? In reviewing the cases decided in the United States, one finds some courts saying beyond a reasonable doubt, others clear and convincing, others by a preponderance of the evidence, and still others various hybrids of the aforementioned. 7A C.J.S. 103, 65-68.

Without answers to these questions, an attorney accused in a disciplinary proceeding is in a hopeless quandary. He cannot have due process, because he doesn't even know what due process is.

I, therefore, respectfully request this Court to issue a Writ of Certiorari in this case.

Respectfully submitted,

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APPENDIX

STATE OF MINNESOTA
IN SUPREME COURT

File No. 81-356

In the Matter of the Petition for Disciplinary Action against WILLIAM CHARLES HOFFMAN, a Minnesota Lawyer.

Findings of Fact, Conclusions of Law & Recommendation

This matter was heard before the undersigned Referee pursuant to the Minnesota Supreme Court's August 11, 1981, Order of Appointment, filed August 13, 1981, on May 11 and 12, 1982.

Janet Dolan, Assistant Director, appeared on behalf of Michael J. Hoover, Director of Lawyers Professional Responsibility. William C. Hoffman, respondent, appeared pro se.

The Referee requested briefs from the parties, the last of which was received on August 20, 1982.

Based upon the testimony of the witnesses, the records, files and proceedings, this Referee finds,

AS FOLLOWS:

1. The respondent, William Charles Hoffman, is an attorney licensed to practice law in the State of Minnesota since October 4, 1960; also licensed to practice in the Federal Court, the Federal Appeals Court and the U. S. Su-

preme Court. He is a sole practitioner with offices located at P.O. Box B, Lake Elmo, Minnesota.

2. Sometime during 1978, respondent was contacted by Robert Clock to represent him in a Workman's Compensation matter. Respondent submitted a letter, dated August 4, 1978, to complainant, Dr. Coleman J. Connolly, 713 Lowry Medical Arts Building, St. Paul, Minnesota, 55102 that he was representing Mr. Clock in his compensation case (Pet. 15).

3. On or about January 4, 1979, an office consultation was held between the respondent, Mr. Clock and Dr. Connolly (Pet. Ex. 15). During the office consultation, respondent told Dr. Connolly to send him the medical bill and *he would see to it that it would be paid* and informed him that a hearing would be held before the Workman's Compensation Commission on February 28, 1979.

4. Dr. Connolly did testify at the Workman's Compensation hearing and submitted a bill for services rendered in the following amounts:

$ 25.00 for office consultation on January 4, 1979
$550.00 Court appearance on February 28, 1979.
$575.00 TOTAL

5. Apparently, Clock's Workman's Compensation case was appealed on two different occasions before being ultimately concluded. Who appealed the decision and for what reason has not been stated nor is it important. The compensation matter was ultimately resolved when respondent received a check from the insurance company

on September 23, 1980, in the amount of $1,391.98 (Res. Ex. B).

A Check was then drawn on respondent's trust account in the amount of $575.00 dated September 24, 1980, payable to Dr. Coleman Connolly. Dr. Connolly's medical bill has been paid in full (Res: Ex. C).

6. Respondent and Dr. Connolly did not have a written contract concerning payment of medical fees. The payment of medical fees was only discussed on January 4, 1979.

7. The controversy surrounding this matter is what occurred between February 24, 1979, and September 24, 1980, when the complaining party was paid for medical fees. The chronology of events that occurred after February 24, 1979, are in dispute.

8. Petitioner's witnesses contend that Dr. Connolly submitted bills monthly expecting to be paid within 30 to 90 days from the time medical services were rendered; that Dr. Connolly did not receive a written statement from respondent indicating he would not be responsible for his medical and that Dr. Connolly made demand for his fees which demands were ignored. Dr. Connolly then contacted the Ramsey County Bar Association's Ethics Committee which referred the matter to the Fee Arbitration Committee which referred the matter to the State Ethics Committee.

9. The State Ethics Committee, by letter dated October 29, 1980, (Pet. Ex. 3) submitted respondent a *warning* stating he violated Opinion 7 of the Lawyer's Professional Responsibility for his failure to pay the doctor's fees when

he did not provide Dr. Connolly with an express written statement that he would not be responsible for payment of his fees. The letter further stated respondent had the right to demand a hearing before the panel of the Lawyer's Professional Responsibility Board and upon proper demand a hearing would be held.

By letter dated October 31, 1980, (Pet. Ex. 4) respondent demanded that Dr. Connolly's charges be submitted to a board panel in accordance with Rule 9 of the Rules of Professional Responsibility. He further reiterated he had done nothing unprofessional.

10. By letter dated December 17, 1980, (Pet. Ex. 5) the Director informed respondent that he must be specific in which facts and conclusions he was admitting or denying and that if he had any explanations, qualifications, defenses or additional information he wished to present he should do so and not merely state he has done nothing unprofessional. They also stated that if he did not follow the format of their letter, it would be deemed a lack of cooperation on his part and that he respond by December 29, 1980.

11. By letter dated December 19, 1980, (Pet. Ex. 6) respondent informed the Director that he had gone way beyond the Rules of Procedure and that the case of *In Re Cartwright* does not support their contention and they were attempting to abrogate the rules and again reiterated that the charge of Dr. Connolly be submitted to a panel in accordance with Rule 9.

12. By letter dated December 31, 1980, the Director filed Complaint Number 1 and Complaint Number 2 against the respondent. Complaint 1 charged the respon-

dent with violation of Opinion Number 7 of the Lawyer's Professional Responsibility Board.

Complaint Number 2 charged the respondent with failure to cooperate with the Director of Professional Responsibility because he refused to include a reply to the facts and conclusions of the Director's letter dated October 29, 1980.

The Director further informed the respondent that a hearing would be held before the Lawyer's Professional Responsibility Board on January 16, 1981, at 9:00 o'clock A.M. in Room 584, United States Federal Courts Building, 316 North Roberts Street, St. Paul, Minnesota. He was informed he had the right to appear and testify, be represented by an attorney and introduce evidence. He was also notified that a pre-trial would be held in the Director's office on Thursday, January 8, 1981, at 10:00 o'clock A.M. The purpose of the pre-trial was to determine which of any of the complaints against respondent are to be admitted, to discuss the possible length of the hearing, witnesses and any and all other relevant issues.

13. By letter dated January 2, 1981. (Pet. Ex. 8) respondent contended that the Rules did not give the Director the right to arbitrarily set a pre-trial conference in his office concerning complaints which had come from their office. He reiterated he had done nothing unprofessional and did not admit to any charges or any portion of them.

14. By letter dated January 6, 1981, (Res. Ex. 9) the Director sent a letter to respondent stating the reasons for a pre-trial hearing and the Board's interpretation of *In Re Cartwright* concerning the responsibility of attorneys to be forthright with the Board and to cooperate with them

in their endeavors. They further informed the respondent, if he did not attend the pre-trial conference they would amend their complaint to allege further non-cooperation on his part because of his non-attendance.

15. On January 5, 1981, respondent secured a subpoena duces tecum from Ramsey County which was served on Dr. Connolly wherein respondent requested the following information:

1. "Your entire records pertaining to Robert Clock's Workman's Compensation case."

2. "Your complete business records for the business for the years 1979 and 1980."

3. "Your entire income tax records for the years 1976, 1977, 1978, 1979, and 1980."

All of the above records were to be brought to the January 16, 1981, hearing before the Board's panel.

16. Dr. Connolly then employed the services of Carol A. Ellingson, Esq., of the law firm of Oppenheimer, Wolff, Foster, Shepard and Donnelly who petitioned the Ramsey County District Court to quash the subpoena. The subpoena was quashed by Judge Hyam Segell, on January 14, 1981, because the respondent failed to appeal. Respondent testified he was not served on the petition to quash the subpoena. It was admitted by counsel Ellingson, that service was not made on respondent concerning the motion to quash; however, a hearing was held and the subpoena quashed.

17. On January 12, 1981, Complaints 3 and 4 were filed against the respondent. Complaint Number 3 charged

the respondent with failure to cooperate as a result of his failure to attend the pre-trial conference set for January 16, 1981.

Complaint Number 4 charged the defendant with abuse of the subpoena power. The Director contends the subpoenaed documents had no relevance to the subject matter of the proceedings and the purpose of the subpoena was merely to harass and oppress Dr. Connolly in retaliation for him submitting an ethical complaint against the respondent. (The respondent testified that he did not receive a copy of the complaints 3 and 4 until after the hearing and was only made aware of them several minutes before the panel hearing which was held on January 16, 1981. (Pet. Ex. 13)

18. A hearing was held before the panel of Lawyer's Professional Responsibility Board on January 16, 1981. Panel members present were James T. Hale, Chairman; Mary H. Davis; Kelly Gage and Richard L. Pemberton.

The Director made an opening statement to the Board with respondent reserving his opening statement. The Director then called respondent for cross examination under the rules. Respondent refused to testify, stating the hearing was quasi criminal in nature and he was not required to testify against himself and the rules did not compel him to testify either. He further contended the notice he received from the Director of the Professional Responsibility Board indicated he had the right to be present but nothing in the notice stated he was required to testify against himself.

After a discussion on the record as to the proper pro-

cedures to be taken, the panel then directed the Director to file a petition with the Minnesota Supreme Court pursuant to Rule (9) (E) (4), a Petition for Respondent's Discipline (Pet. Ex. 14).

19. By notice dated March 31, 1981, the Director of the Board of Professional Responsibility petitioned the Minnesota Supreme Court for disciplinary action against the respondent.

The petition alleges five separate violations. The first four have been alluded to earlier, and Complaint Number 5 charges the respondent with non-cooperation based on his refusal to testify before the Board's panel.

20. The respondent has now submitted an answer and affirmative defenses to Complaints 1 through 5. He contends that he never indicated he would not be responsible for Dr. Connolly's bill, denies he did not respond to the doctor's monthly statements and denies he stated that an appeal of the compensation case would be concluded within 30 days. He asserts he advised Dr. Connolly personally in his office that the bill would be paid, states he kept the doctor's office advised as to the progress of the compensation case and states he paid Dr. Connolly's bill on September 24, 1980, upon receipt from the insurance carrier.

21. He affirmatively defends on charges 2 through 5, which defenses are essentially the same, wherein he contends that the Director of Professional Responsibility is going beyond his authority pursuant to the rules and pursuant to the interpretation of *In Re Cartwright* concerning what is cooperation.

22. A hearing was held before the undersigned referee on May 11 and 12, 1982, pursuant to an Order from the Minnesota Supreme Court dated August 11, 1981, Order for Appointment, filed August 13, 1980. Upon submission of the evidence this referee gave all parties an opportunity to submit memorandum, proposed findings of fact, the last of which was received on August 20, 1982.

23. This referee finds that the respondent did not submit anything in writing to Dr. Connolly that he would not be personally responsible for payment of his fees; however, I do find that Dr. Connolly and his staff did not expect to be paid personally by respondent but from Mr. Clock's insurance carrier. In fact, respondent had informed Dr. Connolly on January 4, 1979, the date of the initial consultation, he would see to it his bill was paid and in fact was paid on September 24, 1980, at the conclusion of the Workman's Compensation matter.

24. Respondent's Exhibit A indicates Mrs. Pates, Dr. Connolly's office manager, had spoken with Mr. Hoffman on August 8, 1979, regarding payment of the doctor's fees. Mrs. Pates was informed that the compensation matter had been appealed and she wrote down it would take another 30 days to be settled. I am certain she wrote down what she understood but what was actually told her is unknown to me.

25. Petitioner's Exhibit 2 shows a memo had been written on a bill that Dr. Connolly's office would appreciate knowing the status of the case so they could get their charges off the books. This is written on January 2, 1980.

26. Respondent has never denied that the bill would not be paid or that he is not assuming responsibility for it.

27. Respondent's Exhibit A and Petitioner's Exhibit 2 and the writings on those exhibits reinforces my interpretion and impression that Dr. Connolly was waiting until the Workman's Compensation case was settled before receiving payment of his bill. He was not looking to Mr. Hoffman personally for payment of his fees. I am satisfied that Mr. Hoffman was going to pay Dr. Connolly's bill as soon as he received the insurance proceeds on the Workman's Compensation matter and that Dr. Connolly also expected payment to be made in that fashion.

28. Mrs. Pates testified she was not certain if the bills were sent out monthly and her conclusion was the bill would be paid when the Workman's Compensation case was concluded. Dr. Connolly's office did not contact Mr. Hoffman at any time stating they expected to be paid sooner than at the conclusion of Mr. Clock's case.

29. The Director also contends that respondent abused the subpoena duces tecum power by requesting certain information from Dr. Connolly and that the purpose was only to harass and thwart Dr. Connolly for filing an ethics complaint.

I do not feel that the subpoena duces tecum as requested by the respondent was an abuse of the subpoena power. Very seldom are subpoena duces tecum specific in nature. Most of them are phrased in general terms. The only thing I disagreed with on subpoena was the request for the doctor's tax records. It was respondent's contention that Dr. Connolly did not need the $575.00 and therefore he was not put in financial jeopardy. Whether Dr. Connolly needed the money or not is irrelevant. He

is entitled to be paid for his services regardless of whether he needs the income or not.

It was only through the subpoena duces tecum that the respondent was able to obtain evidence and convince this referee that Dr. Connolly did not expect to be paid from him personally but through the insurance proceeds. The respondent received Exhibit A through the subpoena duces tecum. He was also able to convince this referee, through the testimony of Mrs. Pates, that she was not certain if statements were sent out monthly and she concluded they did not expect to be paid until the Workman's Compensation case was concluded.

30. The more perplexing problem is that the respondent, and anyone else situated such as he, do not, under the Rules of Professional Responsibility, have the luxury of investigating matters further except through the issuance of a subpoena. No allowance is made for serving interrogatories on anyone for purposes of discovery. There is absolutely no allowance for discovery on the part of an attorney.

31. The Rules of Procedure do not give the Director of Professional Responsibility the authority to set up a pre-trial hearing and then contend it's a violation on the part of an attorney for failure to cooperate because he did not appear at the pre-trial hearing. The Director's authority to act is contained within the rules. He has no more authority than the rules give him. His authority ends with what it begins, the rules. If he needs more authority to act and to carry on the functions of his office, then the rules should be changed so everyone will know what the rules are and not what someone thinks they may be.

32. After hearing the testimony in this particular case, I find, and feel, that the Director was in error by submitting a *WARNING LETTER* to the respondent contending he had violated Opinion Number 7 because he did not have a written contract with Dr. Connolly and that he would not be responsible for the doctor's fees. I found earlier Dr. Connolly did not expect to be paid by the respondent but was looking to the insurance carrier.

The Director's Office never contacted the respondent to hear his side of the issue before issuing a warning letter. They spoke only with Dr. Connolly and his witnesses and then determined that the respondent had violated Opinion 7 by not having a written contract.

The Director did not conduct an in depth investigation in this matter prior to the issuance of a warning letter and, while I do not agree with all of respondent's actions, the whole issue may not have come about had the Director's Office not been so one-sided in this matter. If they had only contacted the respondent to hear his side of this matter, I feel confident it never would have gotten this far.

No findings are made regarding whether proceedings of this nature are quasi-criminal or civil.

CONCLUSIONS OF LAW:

1. Respondent was and always has been responsible for the payment of Dr. Connolly's fees. Dr. Connolly was not looking personally to the respondent for payment of his fees but was instead looking to the insurance carrier which is borne out by the exhibits.

2. The respondent did not violate the subpoena power by subpoenaing Dr. Connolly's tax records, business rec-

ords and records pertaining to Mr. Clock's Workman's Compensation case. The whole matter related to the Workman's Compensation case. The tax records was ruled immaterial to the litigation. The doctor did not bring his tax records to the hearing in any event.

3. The Director does not have the authority to set a pre-trial hearing and then allege it is a violation of cooperation on the part of an attorney because he does not appear at the pre-trial. The Director's Office was informed prior to the hearing that the respondent would not appear.

4. The respondent did not violate Complaint Number 1, 2, 3, 4 and 5 as alleged in the petition.

5. No conclusions are made regarding whether attorney disciplinary proceedings are civil or quasi-criminal in nature.

RECOMMENDATION

I recommend this matter be dismissed.

Dated this 17th day of December, 1982.

/s/ Gerald J. Wolf,
Referee

STATE OF MINNESOTA
IN SUPREME COURT

No. 81-356

In the Matter of the Petition for Disciplinary Action Against William Charles Hoffman, a Minnesota Lawyer.

Amended Order

Pursuant to the recommendation of the referee and the motion of the Director of Lawyers Professional Responsibility,

IT IS ORDERED that the within proceeding be, and hereby is, dismissed with no costs awarded to either party.

Dated: February 16, 1983.

BY THE COURT

/s/ Douglas K. Amdahl
Chief Justice

Supreme Court
(Filed Feb. 16, 1983.)
Wayne Tschimperle
Clerk

STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of the Application for the Disbarment of the Honorable JACK F. C. GILLARD, an Attorney at Law of the State of Minnesota.

Order

47309

The above entitled matter came on for hearing before a panel of this court on January 18, 1977, at 3 p.m. to hear and consider specific motions pertaining to proceedings now pending. Based upon all the files, records, and proceedings and this court's determination that the proceedings are civil and not criminal in nature,

IT IS HEREBY ORDERED THAT:

1. Respondent shall file a detailed response to all charges against him; a general denial of the specific charges is inadequate;

2. Respondent shall respond to and cooperate in all discovery procedures. If he elects to assert the privilege against self incrimination, such privilege must be asserted and directed to specific questions at the time his deposition is taken.

3. Disbarment proceedings having been recommended by the Lawyers Professional Responsibility Board, there is no requirement that additional charges in conjunction with these proceedings be approved by the Lawyers Professional Responsibility Board, absent a showing of specific prejudice to respondent; and

4. Judge Rolf Fosseen acting as referee of this court be and is authorized to rule on all prehearing motions made in these proceedings; however, upon the request of either party, this court will immediately review any and all orders made in connection therewith.

Dated January 19, 1977.

BY THE COURT

/s/ Robert J. Sheran
Chief Justice

Supreme Court
(Filed Jan. 19, 1977.)
John McCarthy
Clerk

STATE OF MINNESOTA
IN SUPREME COURT

File No. 82-672

In the Matter of the Petition for Disciplinary Action against P.R.S., a Minnesota Lawyer.

Copy Received Aug. 17, 1982
Lawyers Prof. Resp. Board

Order on Motion

Petitioner, Director of the Lawyers Professional Responsibility Board, seeks disciplinary action of the Court,

asserting unprofessional conduct of P.R.S., a Minnesota lawyer. An Order (28 May 1982) of the Court calls for submission of the matter to a referee.

By means of his Notice instrument dated 13 July 1982, the Director lawfully[1] scheduled the taking of the personal testimony of the Respondent, P.R.S., by deposition upon oral examination. Respondent moves the Court's referee to adjudge null and void the Notice calling for his deposition, asserting that his oral examination is precluded because of his rights under pertinent provisions of the Fifth Amendment[2] to the Constitution of the United States, and under the parallel provision of Section 7[3], Article I, of the Constitution of the State of Minnesota.

Fifth Amendment claims of Respondent have affected earlier proceedings in the case. This is reported in pleadings of the parties, Count Four in the Director's Petition of 9 June 1982, and Respondent's allegations on that count in his Answer of 29 June 1982. Counsel for Respondent asserted the Fifth Amendment to explain the refusal of Respondent to testify before a Panel of the Lawyers Professional Responsibility Board in proceedings conducted on 19 March 1982 and in further Panel proceedings conducted on 18 May 1982. Controversy of the parties on the topic arising in the May 1982 Panel proceedings led to a hearing before the Court on 28 May 1982, and the Order of the Court (28 May 1982) calling for direct submission of the matter to a referee of the Court, without further

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[1]Pursuant to Rule 30, the Minnesota Rules of Civil Procedure for the District Courts, applicable in the case according to the provisions of Rule 14(b) of the Minnesota Rules on Lawyers Professional Responsibility.

[2]"No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

[3]"No person shall . . . be compelled in any criminal case to be a witness against himself. . . ."

panel proceedings, and providing for a non-public, confidential hearing before the referee.

A hearing on Respondent's Motion was conducted on 5 August 1982. At the same time the referee of the Court heard arguments of counsel on a Motion (29 July 1982) of the Director, his request for an order striking language from Respondent's Answer of 29 June 1982 (parts of allegations on Count Four of the Director's Petition), language accusing the Director (or his staff) of unprofessional conduct. The Director's Motion was founded on the entirety of the Minnesota Rules on Lawyers Professional Responsibility and on Rules 12.02 and 12.06 of the Minnesota Rules of Civil Procedure for District Courts[4].

The Referee has heard no testimony in the case, nor has he been given affidavits related to Motions now considered. This initial Order, a declaration of matters of law, relates to procedures in cases of the kind. The parties mutually recognize the relevance of the Fifth Amendment to the case, having regard for the allegations in Count One of the Director's Petition, allegations of misconduct which show or tend to show violations of criminal statutes of the State of Minnesota.

The conclusions of the Referee, his pre-hearing Order in the case, are as follows:

1. Respondent, P.R.S., has no constitutional privilege (under the Fifth Amendment to the Constitution of the United States, or under Section 7, Article I, of the Constitution of the State of Minnesota) which destroys the right

[4]Rule 12.02 permits a motion to state the defenses of lack of jurisdiction or failure of pleading to state a claim upon which relief can be granted. Rule 12.06 permits the striking from a pleading of "any insufficient defense" or "any redundant, immaterial, impertinent or scandalous matter."

of the Director to call for his testimony in the case. Respondent should be permitted to refuse responses that would support his conviction on a criminal accusation or furnish a link in the chain of evidence needed to prosecute him for a crime; the Fifth Amendment privilege can be asserted when Respondent has reasonable cause to believe his answer to a question would so incriminate him. The reasonableness of Respondent's claims of privilege must be separately decided by a judicial officer, and Respondent's claims of privilege will be inappropriate whenever it clearly appears to the judicial officer that Respondent is mistaken in claiming reasonable cause to apprehend danger in a particular response; absent such a judicial determination, Respondent's separate claims of privilege free him from an obligation for a particular response. The Director is granted his right to take the testimony of Respondent in proceedings to be conducted before the Referee for that purpose on 9 September 1982, commencing at the hour of 9:30 o'clock a.m., and thereafter on the direction of the Referee, the proceedings to be conducted in Courtroom No. 13, Third Floor, Summit Bank Building, Minneapolis, Minnesota; the personal appearance of Respondent is required at the time and place stated. The law would permit the scheduled proceedings to be considered a judicially supervised taking of the deposition of Respondent upon oral examination. Instead, the Referee will look upon the proceedings as a bifurcated portion of the hearing in the case, so that testimony of Respondent in the proceedings will become directly a part of the evidence in the case. This Order of the Referee grants relief for Respondent related to his current Motion. Save as relief is so granted, the Motion is denied.

2. On the Director's Motion (29 July 1982), and pursuant to Rule 12.06 of the Minnesota Rules of Civil Procedure for District Courts, and otherwise on matters of law in Minnesota on the discipline of attorneys, the following portions of Respondent's Answer of 29 June 1982 are stricken as impertinent:

a. The entire contents of Paragraph C in allegations on Count Three of the Petition in the case.

b. The entire contents of Paragraph K of allegations on Count Four of the Petition in the case.

c. The following language, part of Paragraph A of allegations on Count Three of the Petition in the case: "The Director's purpose in delaying any action on this charge was to aggrandize his office and himself by bringing stale charges in order to curry favorable media attention."

d. The following language, part of Paragraph 1 of allegations on Count Four of the Petition in the case: "The Director and the Panel Chairman seemed to have had *ex parte* communications because . . . ."

Save as to the portions of Respondent's Answer so specifically stricken, the Director's Motion is denied.

Dated 12 August 1982.

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Referee of the Court

Memorandum

Respondent suggests that a decision on his Fifth Amendment Motion is controlled by the holding of the Supreme

Court of the United States in *Spevack v. Klein*, 385 U.S. 511, 87 S. Ct. 625, 17 L. Ed. 2d 74 (1967). The Court in that case decided that the Fifth Amendment privilege could be lawfully asserted in a proceeding for discipline of an attorney; more particularly, the Court determined unlawful the disbarment of an attorney based on his claim of the privilege. It seems abundantly clear that the *Spevack* case had no direct impact on issues as to which inquiries were subject to a Fifth Amendment objection.[5] Because of the *Spevack* decision, there stands before referees in Minnesota proceedings for the discipline of attorneys the need to respect a Fifth Amendment objection as to testimony it affects. It is equally clear that a referee must look elsewhere for rules of law determining which testimony is affected by the privilege; on those questions the law is the same in a disciplinary proceeding as in other noncriminal cases where the privilege is claimed.

II.

Partly because of his erroneous view of the holding in the *Spevack* case, Respondent argues that a Fifth Amendment privilege applies as to any testimony which might support disbarment or other discipline of an attorney. This issue, whether the privilege affects testimony which incriminates for purposes of discipline, has been fully argued by the parties. The Referee is convinced, as indicated in the preceding Order, that the application of the privi-

[5] It is not merely implied in the *Spevack* case that it did not address the question as to the kinds of testimony protected by the Fifth Amendment. The majority opinion noted that applicability of the Fifth Amendment to the evidence (records) was not questioned in the case. 385 U.S. at 518. These observations supported the comment of Justice Fortas, in a concurring opinion, that a question on application of the privilege was "not appropriately presented" in the case. 385 U.S. at 520.

lege is limited to testimony which incriminates for purposes of criminal responsibility. It is apparent to all that the Fifth Amendment affects testimony sought for use in a "criminal case". It is currently established as a matter of law in the State of Minnesota that disciplinary proceedings cannot be categorized as "criminal"; it follows that the privilege does not exist regarding testimony supporting or tending to support discipline of an attorney.

a. The pertinent legal conclusion of the Supreme Court of Minnesota is amply indicated in its adoption in 1971 of Rule 25 of the Minnesota Rules on Lawyers Professional Responsibility. The Rule categorically calls for disclosures having a patent tendency to support petitions for discipline. The Rule clearly contemplates the civil nature of the proceedings or a like basis for considering inapplicable to these cases the provisions of the Fifth Amendment.

b. The implications of Rule 25 are consistent with prior appellate decisions of the Supreme Court of Minnesota. The Director rightfully refers to the decisions of *In re Hanratty*, 277 N.W. 2d 375 (Minn., 1979), where a disciplinary case was considered "a civil action" (277 N.W. 2d at 376), and where the Court said that "criminal" safeguards do not apply. Of equal importance are the decisions which anticipate adoption of Rule 25, those which recognize the burden of an attorney to cooperate in furnishing information in disciplinary proceedings. See *In re Cartwright*, 282 N.W. 2d 548 (Minn., 1979), and cases cited in that opinion (282 N.W. 2d at 551).

c. The Director cites numerous decisions which permit use in a disciplinary case of testimony previously com-

pelled under a grant of immunity from use in criminal proceedings. See 62 ALR 3d 1145 (1975). Respondent doubts the importance of these cases in limiting a claim of Fifth Amendment privilege by a witness in a disciplinary case. The cases are relevant and the language from the opinions is telling. The decisions, of course, are not binding on the courts of Minnesota. They indicate, however, a widespread acceptance of the proposition that testimony is not protected by the Fifth Amendment merely because of its affect in supporting discipline of an attorney.

d. Opinions of the Supreme Court of the United States have occasionally identified disciplinary proceedings as "quasi-criminal" in nature. Respondent believes this to be important. Mr. Justice Douglas so observed for the Court in a decision requiring "fair notice" for those cases as a matter of procedural due process. *In re Ruffalo*, 390 U.S. 544, 551, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968). Recently, Mr. Justice Brennan characterized disciplinary proceedings in a similar way, supporting the view of the Court that Federal courts abstain from interference with state judicial proceedings of the kind, and in spite of his personal view that similar deference is not appropriate for state "civil" proceedings. *Middlesex County Ethics Committe* v. *Garden State Bar Association*, —— U.S. ——, 102 S. Ct. 2515, 2525, 73 L. Ed. 2d 116, 128 (21 June 1982). (Overlooked here is the question whether these two observations represent the dominant view of the Court. Regard is appropriate, for example, to the line of authority which emphatically distinguishes disciplinary proceedings from criminal cases, having regard for the special privilege a lawyer seeks in being qualified to prac-

tice law, a matter addressed in the dissenting opinion in *Spevack* v. *Klein, supra,* and cases cited there [385 U.S. at 525 ff.].) Neither of the references to "quasi-criminal" proceedings bears directly on a Fifth Amendment privilege claim. Both deal with rules the majority of the Court believes are as applicable to civil cases as other cases. Equally important is the fact that "quasi-criminal" is not the same as "criminal". The references are simply immaterial on the proposition that the threat of discipline be equated with criminal conviction for purposes of the Fifth Amendment of the Constitution.

III.

The parties have considered whether application of the Fifth Amendment in the case might be totally precluded because of some grant of immunity to Respondent. Respondent has not been granted, however, any immunity in connection with his testimony which would preclude his claim of a Fifth Amendment privilege. (The subject is governed by a decision of the Supreme Court of the United States in *Kastigar* v. *U.S.*, 406 U.S. 114, 29 S. Ct. 1653, 32 L. Ed. 2d 212 [1972], which does not require the granting of a "transactional" immunity, but which does demand a grant of immunity from use of compelled testimony or use of any information directly or indirectly derived from such testimony [so-called "use and derivative use" immunity]. The Director has advised the Referee of an intention to explore further the opportunities under the law in Minnesota to grant immunity to Respondent regarding his testimony in the case; further suggestion of that kind have not come before the Referee before the date of issuance of this Order.

IV.

The Referee calls for judicial supervision of cross-examination of Respondent. This is founded on the appellate determination that each application of the Fifth Amendment privilege depends upon a judicial decision *Hoffman* v. *U.S.*, 341 U.S. 479, 486, 71 S. Ct. 814, 818, 95 L. Ed. 1118, 1124 (1951), citing *Rogers* v. *U.S.*, 340 U.S. 367, 71 S. Ct. 438, 95 L. Ed. 344 (1951). It is in accord with the apparent wishes of the Court in the immediate case, the implications in its Order of 28 May 1982; the Court had heard statements of the convictions of the parties on the Fifth Amendment issue, and its action showed a clear preference against further confrontations on that issue in preliminary proceedings.

V.

The immediate Order suggests certain standards, mostly as those are determined by the language in the *Hoffman* case, *supra*. It states the kind of evidence which is protected by the Fifth Amendment; it suggests the standard affecting a witness in considering application of the privilege; and it asserts the judicial standard for evaluation of a witness' claim of the privilege. On these topics the current Order has the nature of a pre-trial order; it would be appropriate for the parties and for the Court to give further attention to the announced standards of law. Suggestion for clarification or correction of these standards may be addressed to the Referee in written communications delivered prior to the convening of the proceedings on 9 September 1982.

VI.

Action of the Referee on the Director's Motion (29 July 1982) was explained during proceedings conducted on 5 August. Further extended comment on the subject is unnecessary. Accusations of misconduct of staff of the Director are not a part of this case. It does not follow that Respondent is left without a remedy on the subject matter; the Referee refuses the suggestion that inadequate remedies exist, and if these seem limited under the Rules for Lawyers Professional Responsibility, they exist on direct application to the Supreme Court, taking account for the direct responsibility of the Court for the conduct of all attorneys admitted to practice in Minnesota.

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[1] IN SUPREME COURT

In the Matter of the Discipline of William C. Hoffman, an Attorney at Law of the State of Minnesota.

Transcript of the Panel Hearing

The above matter came on for hearing before a panel of Lawyers Professional Responsibility Board, on the 16th day of January, 1981, at 584 Federal Court House, St. Paul, Minnesota, commencing at approximately 3:00 o'clock p m.

* * *

PANEL MEMBERS:

James T. Hale, Chairman
Mary H. Davies
Kelton Gage
Richard L. Pemberton

APPEARANCES:

Janet Dolan, Esquire, Staff Attorney, and Bruce Martin, Esquire, Assistant Administrative Director, 300

Simon Building, St. Paul, Minnesota, appeared representing the Lawyers Professional Responsibility Board.

William C. Hoffman, Esquire, Attorney at Law, 1624 Wilson Avenue, St. Paul, Minnesota 55106, appeared pro se

[2] MR. HALE: On the record. Let the record show that on this 16th day of January, this is a proceeding before a panel of the Lawyers Professional Responsibility Board involving the matter of Attorney William C. Hoffman.

For the record, I will introduce myself. My name is Jim Hale, Attorney from Minneapolis, designated as Chairman for purposes of the panel today. I would like the rest of the members of the panel and other persons present to identify themselves, please.

MR. GAGE: Kelly Gage, panel member, Attorney from Mankato.

MS. DAVIES: Mary Davies, lay member of the panel.

MR. PEMBERTON: Dick Pemberton, Lawyer, Fergus Falls.

MS. DOLAN: Janet Dolan, Staff Attorney for the Director of the Lawyers Professional Responsibility Board.

MR. HOFFMAN: William C. Hoffman. This man here is John Grotney, Great American Insurance Company. The lady is Merle Erlick, Workers' Compensation Division, State of Minnesota. And my children, Ann and Joseph, are sitting on the other side.

MR. HALE: Thank you. Ms. Dolan, you may proceed.

[3] OPENING STATEMENT

MS. DOLAN: Thank you. Mr. Chairman, members of the panel: The matter here before you today began as a relatively simple matter, that is, began as the issuance of a warning for violation of Opinion 7 of the Lawyers Professional Responsibility Board. However, because of the conduct of the respondent, subsequent to the issuing of that warning, this matter has turned into a very serious disciplinary matter because of the lack of cooperation on the part of the respondent. This matter began with the complaint of Dr. Coleman Connolly, that he had been retained by the respondent for an office consultation for an appearance at a court proceeding that he had not been paid the fees for the services. The evidence will show that the office consultation took place on January 4, 1979, and the court appearance was on February 28, 1979. The evidence will establish that the fees for these services were $575, and that a monthly statement was submitted in March of 1979, a month following the services. The evidence will also establish that monthly notices were sent each month subsequent to that time. The evidence will also show that the respondent failed to pay the fees of Dr. [4] Connolly until September 25th of 1980, sometime 19 months after the initial office consultation.

Furthermore, the evidence will show that the respondent had no contact, he initiated no contact with the doctor regarding these fees. Also, the evidence will show that the respondent not enter into a fee agreement with the doctor, he did not provide the doctor with a written statement that it was not possible for him to pay the fee. In fact, the subject of fees was never discussed. The evidence will show that there was absolutely no information given to the doc-

tor that would have given him any indication that he woud not be paid his fees in a reasonable business time, or that he would have to wait for the culmination of a lawsuit in order to be paid his fee.

Furthermore, the evidence will show that following the issuance of a warning for violation of Opinion 7, the respondent refused to cooperate with the Director in the investigation in this matter. The evidence will show that the respondent refused to answer the allegations set forth in the warning, and that the respondent refused to attend the pre-hearing conference scheduled in that matter. The evidence will also show that the respondent used his subpoena power to retaliate [5] against the complainant for filing the complaint. The evidence will show that he used his subpoena power to subpoena books, records, medical records, and income tax reports that had no relevance to this proceeding. The evidence will show that this subpoena caused the complainant undue hardship, forced the complainant to contact his accountant to seek the counsel of an attorney who then went into district court and quashed the subpoena. The evidence will show that the respondent also used the subpoena power to subpoena the books and records, the medical records of his Workers' Compensation client and the business records relevant to that client from another doctor who had been involved in the Workers' Compensation case, and that this subpoena also caused undue hardship because the respondent failed to contact the person subpoenaed or in any way provide any guidance to the person subpoenaed as to the providings or what was required. The evidence will also show that the respondent subpoenaed the books and records and files of the Workers' Compensation Department relevant

to the original Workers' Compensation. Again, no contact with the person concerned as to this proceeding and what was expected—who was doing the subpoenaing of the books and records or other information [6] for people to comply with the subpoena. The evidence will show as a result, all of these people subpoenaed were forced to call the Clerk of Court, call the judges, call our office, call their attorneys, and in general, caused a great deal of inconvenience for people involved in not only the disciplinary process, but people who were not involved in this proceeding.

I wish to bring to the panel's attention the issues that are involved in this matter and the issues that are not involved in this matter. This matter includes the issue of whether the respondent violated Opinion 7 of the Lawyers Professional Responsibility Board, whether the professional misconduct for which separate charges are relevant for his failure to cooperate with the director in his investigation by failing to respond to the charges, by failing to attend a pre-hearing conference, and whether it is professional misconduct for the respondent to have used his subpoena power to retaliate against the complainant and to cause undue inconvenience for the persons subpoenaed. What is not before this panel is the subject matter of that original Workers' Compensation claim. What is not before this panel is the quality of Dr. Connolly's services or the reasonableness of his fees. [7] The petitioner will be calling as witnesses the respondent, Dr. Coleman Connolly, Mary Lou Pates, the office nurse and bookkeeper for Dr. Connolly, Oive Kloster, the office nurse and bookkeeper for Dr. Ruben David who was subpoenaed, and also Merle Erlick, who is an office person from the Workers' Compensation Board who also was subpoenaed.

I wish to stress that the purpose of my calling Ms. Kloster and Ms. Erlick is merely to present the facts and circumstances surrounding the subpoena and possible inconvenience that resulted from the subpoena in the fashion in which it was served. Thank you.

MR. HALE: Mr. Hoffman, you may make an opening statement as well if you like.

MR. HOFFMAN: May I reserve it until later?

MR. HALE: You may reserve it until later.

MR. HOFFMAN: I would like to reserve it.

MR. HALE: Proceed.

MS. DOLAN: The petitioner calls to the stand the respondent, Mr. Hoffman.

MR. HOFFMAN: I am not going to testify.

MR. HALE: Well, would you like to respond to that, Ms. Dolan?

[8] MS. DOLAN: I would like the respondent to testify. I believe it is his duty to cooperate. I would consider that uncooperation.

MR. HALE: I presume you are calling him for cross-examination under the Rules?

MS. DOLAN: Yes.

MR. HALE: Pursuant to the Rules, Mr. Hoffman, and procedures under which we proceed as well, it is proper for her to call you for cross-examination under the rules.

MR. HOFFMAN: Mr. Chairman, I would like to refer the panel to two letters, one December 31, 1980 from the Lawyers Professional Responsibility Board, on the third page, this states that "Note that you have a right to appear at such hearing and testify there at." Says that I have the right to appear and testify. Does not state that I have to testify. I would also like to refer to a letter of Jan-

uary 12, 1981, again on the third page it says basically the same thing, "You are notified that you have a right to appear at such hearing and testify there at." It would seem to me that this is a quasi-criminal type of proceeding. It would also seem to me that based on that, I have the right to appear and testify and as equal right I have the right to not testify. In addition, I know of no rule with regard to [9] the panel that says that the respondent has to testify, and that if the panel would direct me to such a rule, but I know of no rules of the Lawyers Professional Responsibility Board or this type of proceeding that says that an attorney has to testify. I would further state to the panel that there is a Supreme Court case decided about 1967 or '68 that I didn't bring down, I don't know if it has ever been overruled. to my knowledge it has not, that an attorney in an investigative type proceeding does not have to testify and does not have to cooperate. I don't have that citation, but I can certainly give it to the panel.

MR. GAGE: Mr. Chairman, Mr. Hoffman, I am Kelly Gage from Mankato. While this is kind of an informal phase, I would like to acquaint you with what my view will be if you testify or not as to the conclusion. If you do refuse to testify, you are as I see it under In Re: Cartwright, refusing to cooperate in this disciplinary proceeding. If you feel that In Re: Cartwright is not the law in 1967 case you may cite the law, the place to take that matter is up with the Supreme Court. If you refuse to testify, I for one think that we should adjourn this matter at this time, certify you to the Supreme Court for filing, let you take it to [10] the Supreme Court.

MR. PEMBERTON: I would join in Mr. Gage's re-

marks, Mr. Hoffman. Dick Pemberton from Fergus Falls—

MR. HOFFMAN: Yes, I know who you are, Mr. Gage, and Mr. Pemberton. I agree that what I say is my position. We have not referred to any rule that I must testify. You have not referred to any citation. You referred to In Re: Cartwright. I do not believe that will give you the power to compel me to testify at this hearing. I say this, gentlemen, I stand by my position. If you are going to have a petition served upon me and certify me to the Supreme Court, then we will have to go that route. But I am going to refuse to testify on the basis that you do not have the right to make me do so, and I do not have any duty to do so, and nothing that compels me to do so.

MR. HALE: Mr. Hoffman, let me also speak briefly to the question. First, in response to your comment about a quasi-criminal proceeding. By all odds, we are all in agreement it is a serious matter. Your Professional livelihood is at stake, and we always take that very seriously. It is not though procedurally a criminal matter in the sense that the criminal laws on self-incrimination and so on are applicable.

[11] Second, in response to your reference to the letters of December 31st and January 12th, it is accurate that you are advised that you are entitled to testify. Those letters in and of themselves though don't indicate that you have a right to choose not to subject yourself to cross-examination. The final question then that you pose to us is under what rules do we operate to conduct these proceedings, and although as Mr. Gage has just indicated, in many ways we operate informally, and at the point at which it is necessary for us to operate in the same fashion

as a court proceeding, then we operate under substantially the equivalant rules which include those to call respondent for cross-examination. Now, before we go on, I would like to ask Mr. Martin if he wants to add anything specifically?

MR. MARTIN: Perhaps the record should reflect that my name is Bruce Martin, assistant director of the Lawyers Professional Responsibility Board. I came into the room late, and have not heard many of the proceedings which have preceded my appearance. I take it, however, that Mr. Hoffman has by way of preliminaries indicated that he will refuse to testify in this matter. It is our position that we will call Mr. Hoffman for cross-examination under the rules of Civil [12] Procedure which do apply to these proceedings. It is our position that Mr. Hoffman's testimony is crucial to this case as any panel member can see by an examination of the complaint which has been issued. It would be our position that if Mr. Hoffman does refuse to testify, he is continuing the course of conduct which has been described and set forth in the complaint. If that does happen, and I believe we should formally give Mr. Hoffman a chance to be called under the rules, we would urge this panel that the disposition be made under Rule 9E4, Minnesota Rules on Lawyers Professional Responsibility, that the panel instruct us to file with the court a petition seeking disciplinary action, and that that instruction contain a recommendation that the ultimate discipline be at the minimum suspension, and possibly disbarment.

With respect to this issue as to whether or not these proceedings are criminal in nature, the law is absolutely clear. There is no question whatsoever, and I need not at this

point cite to this panel the numerous authority which indicate that, although these proceedings are what are called sui generis. I don't know if the court reporter will know how to spell that or not. They are definitely not criminal proceedings. The constitutional constraints which apply to most criminal pro- [13] ceedings simply do not apply here. Therefore, I would suggest to the panel that we proceed with the hearing, although with perhaps short opening statements, we be given an opportunity to call Mr. Hoffman for cross-examination under the rules. Oh, I am sorry, I am told now that he actually has been called. In that case, it is our position that this panel has the duty under Rule 9, E, 4 to determine that there has been not only a refusal to cooperate as evidenced in the complaint, but a refusal to cooperate with this board, and that this matter should definitely be submitted to the Supreme Court, and that at an absolute minimum, the respondent should face the possible suspension.

MR. HALE: Mr. Hoffman, let me just suggest what the next step in the process would be. We wou'd be happy to hear any comment that you would want to address to this specific subject as to whether you want to permit yourself to be subjected to cross-examination under the rules. If you conclude now that the answer is yes, we will simply proceed with the panel hearing on the way we decided. If you conclude the answer is no, that you won't, then this panel will meet privately for a short period of time to determine whether we will agree our recommendation has got to be, and reconvene people to give [14] you that advice. I guess at this point we would like to hear any further comment you have.

MR. HOFFMAN: Thank you. Mr. Chairman, while

Mr. Martin was speaking and while some of the members of the panel were speaking, I looked at the rules on Lawyers Professional Responsibility. I cannot find anything in those rules that says that the rules of the District Court of the State of Minnesota apply to this hearing, and that I am required to testify. Now, you mentioned that it is something with regard to the panel, the panel takes the position that those rules apply. But there are no rules that say that they do apply.

My whole situation here has been this: Everytime that the board of Professional Responsibility has told me to accept something, such as the warning the first time, and I refused, I asked for a panel hearing under the Rules, they told me they were going to bring another charge against me. Then when they told me I had to go to their office for a pre-trial, I cited the rules that said that this was not permitted. They cited another charge against me. Then today I received two new charges against me in the mail. Well, first charge pertains to Dr. Connolly, second pertains to the fact that I [15] relied upon the Rules of Professional Responsibility and contended that the investigation, when it was completed by the Director, permitted me to apply for a panel. When I did not answer Ms. Dolan's request to admit and deny, which the rules do not give her the right to do, then she threatened me and subsequently filed the second complaint. Then I was advised by Mr. Hoover that if I didn't come to the pre-trial, I was advised there was going to be a pre-trial, I wrote to Ms. Dolan and said that the rules don't provide for a pre-trial, particularly not in their office, there is no independent judge, no independent person, no independent place, I wouldn't attend such a pre-trial because the rules didn't

provide for it, they threatened me again and said there would be another complaint, and of course, that is complaint number 3. Then subsequently, I have been served today with complaint number 4, which says that the subpoena, which I served upon Dr. Connolly, was an improper use of my power. Seems to me that the Lawyers Board of Professional Responsibility has taken the position all along that they have all the rights, and that I don't have any rights at all, that I don't have the right to defend myself.

Now, gentlemen, I am sorry, Mr. Chair- [16] man, I didn't get your name—I mean I don't remember. I did get it.

MR. HALE: Hale.

MR. HOFFMAN: Mr. Hale, every one of you members is listed on the letterhead of the Lawyers Professional Responsibility Board. Every one of you people is on that Board. I do not feel that I can have a fair hearing before a group such as you who are members of the same organization that is trying to charge me. I will say this, gentlemen, for the record, I feel I have a good basis in law for everything that I have done here. I persist in the statement that what I have done is correct, and you can threaten me all you want, and you can petition the Supreme Court of the State of Minnesota all you want. I am going to persist in my rights and I am not going to give them up. Now, if the Supreme Court of Minnesota says otherwise, that's a different matter. But they have never ruled on some of these things. And if necessary, maybe we will end up in the Supreme Court of the United States. But lawyers do have rights. And although we may be subject to the State of Minnesota Supreme Court to watch over us and to a Law-

yers Board of Professional Responsibility, we are not necessarily going to have to subject ourselves to a Kangaroo Trial, which I feel this pro- [17] ceeding is becoming. I think I am guilty before I even have a chance to introduce any evidence.

I will say this in response to Ms. Dolan's statement that she made, she has made allegations here, but allegations aren't proof. I have heard things here today that have come out of her mouth that leave me cold. I can't believe some of the things that she said. I think if there has been any unprofessional conduct, it has been on the part of the Lawyers Professional Responsibility Board whom while they watch over the lawyers, who watches over them? And I absolutely will not take that stand and testify unless a Superior Court says that I must, because I contend this, you are fooling with my education, you are fooling with my good name, and you are fooling with my right to earn a livelihood, and I have certain rights, under not only the State Constitution, but the Federal Constitution. That's my response.

MR. HALE: Thank you, Mr. Hoffman.

We will adjourn—

MR. PEMBERTON: I would like to ask a question, if I may.

MR. HALE: Certainly.

MR. PEMBERTON: Mr. Hoffman, did you request this panel hearing?

MR. HOFFMAN: I did, Mr. Pemberton. [18] I requested it.

MR. PEMBERTON: Do you now request that the panel hearing go forward and that you have a panel hearing, or are you now withdrawing that request?

MR. HOFFMAN: I requested the panel hearing in accordance with Rule 9, because that's the only right of a panel that I have in accordance with the Lawyers Professional Responsibility Rules, when I am issued a warning that I do not want. That's the only right of appeal that I have. I requested such a hearing. I do not have the right to select the members, I do not have a right to do hardly anything. But I did comply with the rules. Now, I have not withdrawn my request for a panel hearing, I have been told that if I don't submit to cross-examination, you are going to tell the Supreme Court or someone to issue a petition against me for unprofessional conduct. If that's the decision of the panel, so be it. Then we will proceed on legal grounds and see how this thing comes out.

MR. PEMBERTON: What is your request as this moment as you sit here? Do you request that the panel hearing go forward or not?

MR. HOFFMAN: Yes, sir. My request is that this panel hearing go forward, but I contend that I don't have to testify. My [19] position is that I have subpoenaed four witnesses. It is now ten minutes after three in the afternoon. We have been here since approximately 9:00 o'clock in the morning, waiting for this hearing. We are ready to proceed. Ms. Dolan says she is now going to call the witnesses that I subpoenaed, which I don't think is proper. I subpoenaed Dr. Connolly, which she can call, but I subpoenaed Miss Erlick from the Workers' Compensation Commission, I subpoenaed Mr. Grotney from the insurance company, I subpoenaed Mrs. Kloster from Dr. Ruben David's office, and now she says she is going to call my witnesses and that she never subpoenaed. I think

that's improper. But I am willing to proceed. I have got my witnesses here. But if I understand this correctly, the panel has already made its decision, and if the panel has and what you have told me is correct, I think this just substantiates that this is not a fair hearing.

MR. GAGE: Mr. Chairman, Ms. Dolan, what is your position on whether or not the board should proceed and take testimony?

MS. DOLAN: My position is that we need the testimony of the respondent to establish the evidence of our case. So we would be in a position to request the respondent to be a witness.

[20] MR. GAGE: I understand you have made the request that the respondent testify. He refused to do so. That much is clear. What I am asking now is, do you see any point in proceeding to hear the rest of the witnesses?

MR. MARTIN: Because Mr. Hoffman's testimony is crucial in this case to enable the panel to make a fair and reasonable determination, it appears that all we would be doing by continuing with the remaining testimony is simply creating a record. If the panel instructs the director to file a petition for disciplinary action, it appears that there will be an Answer which will deny most of the allegations, matters will then be heard by a referee pursuant to the rules. If the panel, however, is contemplating a petition for the immediate suspension of the respondent pursuant to the rules, then in that case it may be appropriate to proceed, but once again we will have an inadequate record. I would also wish to make one point for the record at this point. Mr. Hoffman has engaged in some rather vigorous discussions to the effect that there may be an incestuous relationship here because the board is hearing

charges brought in Mr. Hoffman's view by the board. I would urge that a careful reading of the rules on Lawyers Pro- [21] fessional Responsibility indicates that that is simply not the case. The Supreme Court by adopting these rules have set up really two entities, the first entity is the Lawyers Professional Responsibility Board, which consists of the parties being both lawyers and non-lawyers appointed by the court to serve the functions set forth in the Rules. There is, however, a separate entity created by these rules, and that entity is the office of the Director of Lawyers Professional Responsibility, the office for which Ms. Dolan and I work, the Director being Mr. Hoover. A close examination of the rules indicates that the Director is appointed and serves at the pleasure of not the board, the Supreme Court. There is a functional purpose for that differentiation, and the purpose being that the Director can serve in investigative and prosecutorial function. The board on the other hand, if proceedings advance to the board, can create panels, utilizing panels that can make judicial decisions. Therefore, I wish the record to reflect our position that Mr. Hoffman has perhaps glossed over the essential difference between the Director and the Board, and there is nothing in these Rules which establishes in any way that this panel will not afford to Mr. Hoffman a fair [22] and impartial hearing. The only thing at this point which precludes a fair and impartial hearing is Mr. Hoffman's continued refusal to cooperate with anyone involved in the disciplinary proceedings. I would cite to the panel the Cartwright case, which as the panel may know, came down in July of 1979. That case was one in a series of cases which dealt with the respondent's obligation to cooperate in disciplinary proceedings. The only way

that these disciplinary proceedings will work is if the Supreme Court can be confident that it has and continues to have the cooperation of the lawyers of this state. In the Cartwright case, and I may be covering something that perhaps Ms. Dolan already covered, but in the Cartwright case it is my recollection that Mr. Cartwright was suspended primarily on the basis that he refused to cooperate with the investigation conducted by the Director and the proceedings conducted by the Lawyers Professional Responsibility Board. I would read to the panel to have in the record a few passages from the Cartwright case. The court stated, "This question is not new to the court. We have long recognized that it is encumbent upon an attorney to cooperate with the disciplinary authorities in their investigation and resolution of complaints against them." [23] There follows that quote a series of cases which have been cited by the court. I would note that that language refers to disciplinary authorities, plural, not only does Mr. Hoffman have an obligation to cooperate with the Director, but now that the matter is before you, he has an obligation to cooperate with you. At this point I would simply state to the panel that we are willing to present whatever evidence we have, not including Mr. Hoffman's evidence in light of Mr. Hoffman's refusal, but that evidence will make no sense without the background which is necessary, and which can only be provided by Mr. Hoffman. It appears at this point that to provide this evidence may be somewhat of a futility. However, we are certainly prepared to do so either by introduction of evidence or perhaps by an offer of proof if the chairman deems that appropriate.

MR. HALE: Any other questions from members of the panel?

(Discussion held off the record.)

MR. HALE: Proceed, Mr. Hoffman.

MR. HOFFMAN: Thank you. In regard to the In Re: Cartwright case, as I read that case, that applies to when the attorney, [24] Mr. Cartwright, was notified by the director, he never responded to the director. This resulted in the problems with him and why he was found not to have cooperated. I cooperated fully with the investigation regarding me, which was conducted by Sheridan Buckley, Lawyers Professional Responsibility Board. Once the warning was issued to me, I then relied upon the rules in regard to my rights. It was at that point that the Lawyers Professional Responsibility Board went beyond anything given to them in the rules. It is at that point that I keep getting threatened and keep getting complaints against me. That's number one.

Number two, I am an attorney practicing law for twenty years, have tried a lot of cases. Never have I been in the court of law where two attorneys representing the same side are permitted to talk to a judge or to a jury or to a panel. It is always one attorney. You might have two attorneys at the counsel table, one making the opening statement, a different one making the final argument. But you don't have both of them getting an opportunity to make opening statements or final arguments or to talk to whomsoever is presiding. This is exactly what we are getting into here.

I would also refer to the rules which [25] says that after hearing, the panel shall do a number of things. We haven't had any kind of hearing. It seems to me that, therefore, under the rules, that the panel doesn't have any power to do anything, that we are right back to where we

were before, and that if they contend that I have a duty to submit myself to testifying, they should seek an order from the Supreme Court. But these are my positions. And I am making them for the record so I can order a transcript so everybody can know exactly what I said and exactly what my position was. Somebody who reads this is going to along the way say that this guy isn't just a fowl ball, hot head, somebody trying to make trouble. He is trying to abid by the rules set out. As I told Miss Dolan in a letter I sent her, the rules pertaining to Lawyers Professional Responsibility are not only set out for the benefit of the board or for the director,they are set out for the benefit of the attorneys who are accused, and I am accused. Any attorney who is brought under charges by the Lawyers Professional Responsibility Board is accused. You can say it is quasi-civil or whatever you want, I contend it is quasi-criminal. I contend there isn't a Supreme Court in the United States case that bears me out.

[26] MR. HALE: Any other comments? All right. We will stand adjourned for private deliberation of the panel, and please stand by and we will respond to you as quickly as we have had an opportunity to reach a conclusion.

MR. MARTIN: Thank you, Mr. Chairman.

(At this time a recess was taken.)

MR. HALE: Back on the record. Let the record show that the panel has adjourned and has privately deliberated on the issue that has been presented to it by the proceedings on the record so far; namely, the fact that Mr. Hoffman has indicated that he will not be called to testify, and that although he has asked that the panel proceeding proceed, it would be if at all without his testimony. It is the conclusion of the panel that we cannot proceed in a mean-

ingful fashion to hear testimony on the issues without also hearing the testimony of Mr. Hoffman. It is also the conclusion of the panel that the declination on Mr. Hoffman's part to testify appears to be evidence of lack of cooperation of the type that the Supreme Court dealt with in the In Re: Cartwright case. On that basis we have concluded from the testimony we have heard and the position of [27] Mr. Hoffman that we will request that the matter be certified to the Supreme Court for discipline with the record to be certified showing the proceedings before us and the stance which Mr. Hoffman took. A couple of additional comments, however. First, because of our conclusion, we have reached the conclusion that we will not take further testimony on parts of the matters in front of us. Therefore, other than the evidence lack of cooperation, it is not possible for us to form any firm conclusion. Therefore, as is permitted to us under the rules, we will certify it to discipline by the Supreme Court without a recommendation that a conclusion be reached. In those cases, Mr. Hoffman, the matter will be certified to and heard in accordance with the procedures of the Suprme Court, and they will reach their own conclusions on the discipline to be rendered. Further, although I am sure you recognize this, but it is probably worth saying on the record, you have raised the question as to whether it is permissible under whatever procedures may be applicable for this panel to compel your testimony. Since it is obvious that no tribunal, including this panel, can properly pass on an appellate level on its own rules, I suggest that as you undoubtedly know that [28] the only proper place then to pass on that question is when it is certified to the Supreme Court. I assume that you are going to want to make your arguments to the Supreme Court at that—

MR. HOFFMAN: I assume all these matters will be presented to the Supreme Court, and that the whole thing will be argued.

MR. HALE: That's correct.

MR. HOFFMAN: So I do not believe that I have to do anything to petition. The petition will be served as I understand it and will be heard by the Supreme Court?

MR. HALE: Exactly. Petition filed with the Supreme Court.

MR. MARTIN: Excuse me, Mr. Chairman. Do I understand that the panel is directing us pursuant to Rule 9, E, 4 to file with the Minnesota Supreme Court a petition for Mr. Hoffman's discipline?

MR. HALE: That's correct. We are adjourned.

3:35 o'clock p.m.

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[29] REPORTER'S CERTIFICATE

I, John T. Kirby, do hereby certify that I have recorded in Stenotypy the hearing before the Lawyers Professional Responsibility Board on the 16th day of January, 1981, at St. Paul, Minnesota;

I further certify that thereafter and on this same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the preceding 28 typewritten pages;

I further certify that said transcript of such hearing is true and correct to the best of my ability.

John T. Kirby
Court Reporter

Dated this 22nd day of January, 1981.

STATE OF MINNESOTA
IN SUPREME COURT

File No. ———

In the Matter of the Petition for Disciplinary Action Against William Charles Hoffman, a Minnesota Lawyer

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Answer and Affirmative Defenses

TO THE SUPREME COURT OF THE STATE OF MINNESOTA AND ROBERT J. SHERAN, CHIEF JUSTICE:

William C. Hoffman, for his Answer to the Petition for Disciplinary Action, states and alleges:

Complaint No. 1

A. Admits the allegations contained in this subparagraph.

B. Admits that a statement for $575.00 was submitted to the undersigned, but alleges that he does not know when it was first submitted.

C. Admits that other statements were submitted, admits that various conversations were had with someone from Dr. Connolly's office regarding the bill, admits that he advised the Doctor's office regarding the appeal of the Compensation case, and admits that he did not indicate that he would not be liable for Dr. Connolly's bill; denies that he did not respond to the Doctor's statements,

and denies that he stated that the appeal of the compensation case would be concluded in 30 days; alleges that he advised Dr. Connolly personally, and also advised his office, that the bill would be paid, alleges that he advised the Doctor's office in 1979 when the bill would be paid, alleges that he kept the Doctor's office advised as to the progress of the Compensation case, and alleges that the bill was in fact paid by check no. 1002 drawn on his trust account, on September 24, 1980, as shown by photostatic copies of the check and its accompanying letter which are attached hereto and marked as Exhibits A, A-1, and B.

D. Alleges that he does not know when other statements were sent, or if in fact other statements were sent; alleges that Dr. Connolly, and his office, were advised that the bill would be paid, and that his office was advised when it would be paid.

E. Admits that a statement was sent in January, 1980; alleges that the Director's Exhibit B clearly contains an inquiry, rather than a demand for payment as alleged by the Director, and alleges that Dr. Connolly, and his office, were advised that the bill would be paid, and that his office was advised when it would be paid.

F. Admits on information and belief that Dr. Connolly wrote to the Grievance Committee of the Ramsey County Bar Association with regard to his bill in April of 1980.

G. Admits that he paid Dr. Connolly's bill by check no. 1002 on September 24, 1980, as shown by Exhibits A, A-1, and B attached hereto.

H. Denies the allegations contained in this subparagraph; alleges that he informed Dr. Connolly, and his of-

fice, that his bill would be paid, alleges that he informed Dr. Connolly's office in 1979 when the bill would be paid, and alleges that Dr. Connolly's bill was paid by him as shown by Exhibits A, A-1, and B attached hereto.

Complaint No. 2

A. Incorporates herein what was stated under Complaint No. 1 above.

B. Admits that he received the Warning issued on October 29, 1980; alleges that the instruction to reply to the facts and conclusions contained in paragraphs A through E of the Warning went beyond what the Rules on Lawyers Professional Responsibility allow for and that there was no duty on the part of the undersigned to reply to said facts and conclusions.

C. Admits the allegations contained in this subparagraph; alleges that his demand for a Hearing was in accordance with Rule 8 (c) (2) (ii) of the Rules on Lawyers Professional Responsibility, and alleges that in accordance with Rule 9 (c) of the Rules on Lawyers Professional Responsibility, he denied the charges brought against him. See photostatic copy of letter of October 31, 1980 attached hereto and marked as Exhibit C.

D. Admits that he received the December 17, 1980 letter; alleges that the Lawyers Professional Responsibility Board, in their letter of October 29, 1980, a copy of which is attached hereto and marked as Exhibit D, *advised the undersigned that their investigation had been concluded and that all attendant facts and circumstances had been taken into consideration,* alleges that the Lawyers Professional Responsibility Board went beyond the Rules on

Lawyers Professional Responsibility with their letter of December 17, 1980, that the Director's rights under the Rules on Lawyers Professional Responsibility were governed by Rule 9 (c) (1) and (2), and allege that In re Cartwright was not applicable to this case because the undersigned had cooperated with the investigation conducted by the Lawyers Professional Responsibility Board, such investigation resulting in the Warning being issued on October 29, 1980. See photostatic copies of the letter from Ramsey County Bar Association dated April 24, 1980, with accompanying letter from Dr. Connolly dated April 3, 1980, attached hereto and marked as Exhibits E and E-1, and also photostatic copies of letters of the undersigned to Sheridan Buckley, who was conducting the investigation, dated April 30, 1980 and May 19, 1980, attached hereto and marked as Exhibits F and G.

E. Admits the allegations contained in this subparagraph; alleges that the Lawyers Professional Responsibility Board was operating outside of the Rules on Lawyers Professional Responsibility, that they were, therefore, going beyond the Law applicable to a hearing, and, therefore, were putting themselves above the Law.

F. Denies the allegations contained in this subparagraph; alleges that the undersigned cooperated with the investigation of the Lawyers Professional Responsibility Board which resulted in the Warning being issued on October 29, 1980, and alleges that once the Warning was issued he fully complied with the Rules on Lawyers Professcional Responsibility, whereas the Lawyers Professional Responsibility Board failed to follow the Rules on Lawyers Professional Responsibility.

Complaint No. 3

A. Incorporates herein what was stated under Complaints 1 and 2 above.

B. Admits that he received the Complaint of December 31, 1980; alleges that the attempt by the Lawyers Professional Responsibility Board to set a pre-hearing conference was again outside the Rules on Lawyers Professional Responsibility, and corroborates this by the fact that on March 26, 1981 an Order was issued by the Supreme Court of the State of Minnesota, and signed by Chief Justice Robert J. Sheran, which sets a Hearing for Friday, June 5, 1981 at 9:30 in the morning on Proposed Amendments to Court Rules on Professional Responsibility, and said Proposed Amendments ask for the addition of a new Rule 25 which would provide under Rule 25 (a) (3) that Attorneys appear for conferences and hearings at the times and places designated, said Order having been published in the April 3, 1981 addition of Finance and Commerce, a photostatic copy of said Order being attached hereto and marked as Exhibit H.

C. Admits the allegations contained in this subparagraph; alleges that he was correct in stating that the Rules did not give the Lawyers Professional Responsibility Board the right to set a pre-hearing conference, and contends that his position is correct as substantiated by the Order of the Supreme Court of the State of Minnesota of March 26, 1981, a copy of which is attached hereto and marked as Exhibit H.

D. Admits that he received the letter of January 6, 1981; alleges that the Lawyers Professional Responsibility Board's demand for written responses to their facts and

conclusions in their letter of October 29, 1980 goes beyond what the Rules on Lawyers Professional Responsibility allow, and is contrary to the statement in said letter of October 29, 1980 *that the investigation had been concluded and all attendant facts and circumstances had been taken into consideration,* alleges that the Lawyers Professional Responsibility Board's attempt to set a pre-hearing conference went beyond the Rules on Lawyers Professional Responsibility, as corroborated by the Order of the Minnesota Supreme Court dated March 26, 1981, a copy of which is attached hereto and marked as Exhibit H, alleges that the Minnesota Supreme Court's statement on the inadequacies of a general denial in disciplinary proceedings applies to an Answer interposed to a Petition and that the undersigned is in compliance with said Order by this Answer and Affirmative Defenses to the Petition for Disciplinary Action which has been served upon him by mail in this case, alleges that he did comply with In re Cartwright by his letters to Sheridan Buckley of April 30, 1980 and May 19, 1980, copies of which are attached hereto and marked as Exhibits F and G, and alleges that the position of the Chairman of the Lawyers Professional Responsibility Board is a position which is not provided for in the Rules on Lawyers Professional Responsibility.

E. Admits the allegations contained in this subparagraph; alleges that the setting of pre-hearing conferences by the Lawyers Professional Responsibility Board is outside the scope of the Rules on Lawyers Professional Responsibility and this is corroborated by the Order of the Supreme Court of the State of Minnesota dated March 26, 1981, a copy of which is attached hereto and marked as Exhibit H.

F. Denies the allegations contained in this subparagraph; alleges that by their letter of October 29, 1980, the Lawyers Professional Responsibility Board informed the undersigned *that their investigation had been concluded and that all attendant facts and circumstances had been taken into consideration,* and alleges that he had complied with the requirements in In re Cartwright by his letters to Sheridan Buckley of April 30, 1980 and May 19, 1980, copies of which are attached hereto and marked as Exhibits F and G.

Complaint No. 4

A. Incorporates herein what was stated under Complaints 1, 2 and 3 above.

B. Admits the allegations contained in this subparagraph; alleges that the four members of the panel of the board, James T. Hale, Mary H. Davies, Kelton Gage, and Richard L. Pemberton, are all members of the Lawyers Professional Responsibility Board, the organization instituting, and prosecuting, the complaints, as seen on the letterhead of the Lawyers Professional Responsibility Board's stationary, a copy of which is attached hereto, dated January 12, 1981, and marked as Exhibit I, alleges that a copy of the Complaints 1 and 2, as contained in the Lawyers Professional Responsibility Board's letter of December 31, 1980, with attendant exhibits, copies of which are attached hereto and marked as Exhibits J, J-1, J-2, J-3, J-4, J-5, and J-6, were mailed to the members of the panel on January 12, 1981, as seen by Exhibit I attached hereto, alleges that the actions of the Lawyers Professional Responsibility Board, and the whole process herein, vio-

lates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Fifth Amendment of the United States Constitution being incorporated in the Fourteenth Amendment of the United States Constitution, and also the Due Process Clause of Article I, Section 7 of the Constitution of the State of Minnesota, alleges that the actions of the Lawyers Professional Responsibility Board, and the whole process herein, also violates the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and the Eighth Amendment of the United States Constitution, as well as Article I, Section 4, Article I, Section 6, and Article I, Section 11 of the Constitution of the State of Minnesota.

C. Admits the allegations contained in this subparagraph; alleges that subpoena duces tecum was served in accordance with, and under, Rule 9 (b) of the Rules on Lawyers Professional Responsibility, and also in accordance with, and under, Rules 45.01, 45.02, 45.03 and 45.05 of the Rules of Civil Procedure for the District Courts of the State of Minnesota.

D. Denies the allegations contained in this subparagraph; alleges that the subpoenaed documents were relevant, and pertinent, for the following purposes:

1. Any notes or writings in the Doctor's records on Robert Clock's Workers' Compensation case relating to conversations that the undersigned had with the Doctor and with members of his office concerning payment of the Doctor's fees.

2. Any notes or writings in the Doctor's records on Robert Clock's Workers' Compensation case relating to the billing of the Doctor's fees.

3. Any notes or writings in the Doctor's records on Robert Clock's Workers' Compensation case relating to the payment of the Doctor's fees.

4. To show by the Doctor's income tax records for the years 1976, 1977, and 1978 the methods that the Doctor followed, and used, in declaring bad debts.

5. To show by the Doctor's business records for the years 1979 and 1980, and by the Doctor's income tax records for the years 1979 and 1980, that the Doctor never considered, nor declared, the fees pertaining to Mr. Clock's Workers' Compensation case to be a bad debt.

6. To show by the Doctor's business records for the years 1979 and 1980, and by the Doctor's income tax records for the years 1979 and 1980, that the Doctor's fees were in fact paid in September of 1980.

7. To show by the Doctor's income tax records for the years 1976, 1977, 1978, 1979 and 1980 that the Doctor, nor his standard of living, were in anyway affected by payment of the fees in September of 1980, rather than at some earlier time.

E. States that he lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in this subparagraph; alleges that the undersigned has never had any contact with Carol Ellingson, or anyone else from the law firm of Oppenheimer, Wolff, Foster, Shepard and Donnelly, in regard to a Mo-

tion to Quash the subpoena duces tecum served upon Doctor Connolly, alleges that the undersigned never received any Motion papers or supporting documents from Carol Ellingson until the afternoon of January 16, 1981 (the date of the Hearing before the panel) in the mail, alleges that he never received a copy of Judge Segell's Order to Quash until he saw it as a part of the Petition for Disciplinary Action in this case, alleges that he never saw a copy of the Affidavit of Carol Ellingson regarding legal fees until he saw it as a part of the Petition for Disciplinary Action in this case, alleges that any Hearing before the Honorable Hyam Segell was an ex parte Hearing without any representation being present on behalf of the undersigned, and that this was the result of service not having been made on the undersigned with regard to the Motion, alleges that the proceedings pertaining to the Motion to Quash violated the Due Process clause of the Fourteenth Amendment of the United States Constitution and also violated the Due Process clause of Article I, Section 7 of the Constitution of the State of Minnesota.

F. Denies the allegations contained in this subparagraph and incorporates herein the matter contained in Subparagraph D and Subparagraph E above in regard to Complaint No. 4.

Complaint No. 5

A. Incorporates herein what was stated under Complaints 1, 2, 3, and 4 above.

B. Admits the allegations contained in this subparagraph; alleges that the undersigned was never served with a copy of the Supplementary Complaint dated January 12,

1981 until he received it in the mail in the afternoon on January 16, 1981, the date of the Hearing, (T. 14), alleges that contrary to all rules of proceeding in any Court, any judicial proceeding, or any quasi-judicial proceeding, two members of the Lawyers Professional Responsibility Board were allowed to address the panel on the same matter at the Hearing, (T. 3-8- 11-13, 19-23, 24), alleges that a copy of the Supplementary Complaint which contained Complaints Nos. 3 and 4, as contained in the Lawyers Professional Responsibility Board's letter of January 12, 1981, with attendant exhibits, copies of which are attached hereto and marked as Exhibits K, K-1, K-2 and K-3, were mailed to the members of the panel on January 13, 1981, as seen by Exhibit L attached hereto, alleges that the undersigned had no opportunity to prepare, and meet, the allegations contained in Complaints Nos. 3 and 4, alleges that the actions of the Lawyers Professional Responsibility Board, and the whole process herein, violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Fifth Amendment of the United States Constitution being incorporated in the Fourteenth Amendment of the United States Constitution, and also the Due Process Clause of Article I, Section 7 of the Constitution of the State of Minnesota, alleges that the actions of the Lawyers Professional Responsibility Board, and the whole process herein, also violates the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, and the Eighth Amendment of the United States Constitution, as well as Article I, Section 4, Article I, Section 6, and Article I, Section 11 of the Constitution of the State of Minnesota.

C. Admits the allegations contained in this subparagraph; alleges that these proceedings are quasi-criminal, (See In re Ruffalo, 1968, 88 S. Ct. 1222, 1226, 390 U. S. 544, 20 L. Ed. 2nd 117) and as such the accused is entitled to Due Process, the right to refuse to testify on the grounds of self-incrimination, and should be afforded all of the rights and privileges afforded to anyone accused of a crime, including the right to a jury trial, the presumption of innocence, the right to remain silent without any adverse reflection being cast, and the right to be found innocent unless guilt is established beyond a reasonable doubt.

D. Alleges that the panel, and the Lawyers Professional Responsibility Board, went beyond any rights afforded to them under any Rules or Laws, (T. 8, 9, 10, 14, 15, 16 and 17) alleges that In re Cartwright is not applicable to this case because the undersigned did cooperate with the investigation conducted by the Lawyers Professional Responsibility Board, as seen by Exhibits F and G attached hereto, (T. 23, 24).

E. Denies the allegations contained in this subparagraph, alleges that the undersigned at all times proceeded in accordance with the Rules on Lawyers Professional Responsibility and complied therewith, and alleges that the undersigned is entitled to exercise all rights afforded to him under the Constitution of the United States and under the Constitution of the State of Minnesota, and the exercise of such rights is neither wrong, improper, or unprofessional.

AFFIRMATIVE DEFENSES

For his affirmative defenses herein, the undersigned alleges the following:

1. That the proceedings violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Fifth Amendment of the United States Constitution being incorporated in the Fourteenth Amendment of the United States Constitution, and also the Due Process Clause of Article I, Section 7 of the Constitution of the State of Minnesota.

2. That the proceedings are quasi-criminal in nature and violate the Fifth Amendment of the United States Constitution, the Sixth Amendment of the United States Constitution, and the Seventh Amendment of the United States Constitution, as well as Article I, Section 4 of the Constitution of the State of Minnesota, Article I, Section 6 of the Constitution of the State of Minnesota, and Article I, Section 7 of the Constitution of the State of Minnesota.

3. That the accused in such proceedings should be entitled to all of the rights afforded to anyone accused of a crime, namely the right to a jury trial, the right to remain silent without any adverse reflection being cast, the presumption of innocence, and the right to be found innocent unless guilt is established beyond a reasonable doubt.

4. That the accused in these proceedings is entitled to know the charges against him and to be given adequate time to prepare, and defend, against such charges.

5. That Disciplinary Rules DR1-102 (A) (5) and DR1-102 (A) (6) of the Code of Professional Responsibility are overboard, do not fairly apprise a person of their meaning, and are unconstitutional under both the United States Constitution and the Constitution of the State of Minnesota.

6. That in this case the Lawyers Professional Responsibility Board has gone beyond the Ethical Considerations set out in the Code of Professional Responsibility, EC1-5 and EC1-6 which interpret Disciplinary Rules DR1-102 (A) (5) and DR1-102 (A) (6) of the Code of Professional Responsibility.

7. That the Lawyers Professional Responsibility Board has acted arbitrarily and capriciously in this case, has acted outside of the Rules on Lawyers Professional Responsibility, has not followed the governing rules and laws applicable in this case, and has made up their own rules, to suit their own purposes, in this case.

8. That the Lawyers Professional Responsibility Board has attempted to harass the undersigned by bringing additional complaints against him whenever he exercised his rights or followed the Rules on Lawyers Professional Responsibility, and through attempted duress has attempted to compel the undersigned to accept their position that the undersigned has been guilty of unprofessional conduct.

9. That the Lawyers Professional Responsibility Board's attempt to use witnesses subpoeaned by the undersigned, whom they had not subpoeaned, as their own witnesses at the Hearing before the panel, and to at-

tempt to show something improper on the part of the undersigned for having subpoeaned said witnesses (Merle Erlick of the Workers' Compensation Division of the State of Minnesota and Olive Klosper T. 5, 6, 7) is improper.

10. The Lawyers Professional Responsibility Board using two attorneys to address the panel on the same matter is contrary to all laws, rules and proceedings applicable to any judicial, semi-judicial, or quasi-judicial proceedings.

11. Complaint No. 1 violates Article I, Section 11 of the Constitution of the State of Minnesota.

12. The costs provided for under Rule 24 of the Rules on Lawyers Professional Responsibility, or any fine, violates the Eighth Amendment of the United States Constitution.

13. The undersigned has the right to follow, and comply with, the Rules on Lawyers Professional Responsibility, and to exercise any rights afforded to him by the United States Constitution, the Constitution of the State of Minnesota, and the Laws of the State of Minnesota, and in doing so does not act unprofessionally.

WHEREFORE, the undersigned demands judgment in this case together with reasonable costs and disbursements.

/s/ William C. Hoffman
Attorney at Law
P. O. Box B
Lake Elmo, Minnesota 55119
770-6582

STATE OF MINNESOTA
IN SUPREME COURT

File No. 81-356

In the Matter of the Petition for Disciplinary Action Against William Charles Hoffman, a Minnesota Lawyer

---

Answer to Motion of Director to Dismiss

William Charles Hoffman, Respondent herein, hereby opposes the Motion of the Director of the Lawyers Professional Responsibility Board to dismiss the above matter on the following grounds:

1. Rule 14 (e) of the Rules on Lawyers Professional Responsibility states that a hearing shall be set before this Court after the Referee makes his Findings of Fact, Conclusions, and Recommendations.

2. The Respondent is entitled to due process in this matter, both under the United States Constitution and the Constitution of the State of Minnesota, and to dismiss this matter now would violate his rights to due process.

3. The issue of whether these proceedings are quasi-criminal or quasi-civil was not decided by the Referee, and the Respondent, as well as all Attorneys, are entitled to have this issue decided.

4. The Director, in support of his Motion, has presented to this Court extraneous matter that is not

part of this case, cannot be presented at this time, and should be disregarded by this Court.

5. The Director has not presented his Motion to this Court in the proper form, or manner, and should be disregarded and stricken.

6. The Respondent contends, as he has always contended, that he has not done anything unprofessional, that the Referee has exonerated him, that he is in no way responsible for this matter coming before the Minnesota Supreme Court, and that he has done nothing to cause the denial to him of his costs and disbursements in this matter.

Dated: January 7, 1983.

Respectfully submitted,

/s/ William C. Hoffman
Attorney at Law
P. O. Box B
Lake Elmo, Minnesota 55042
770-6582

Lawyers Professional Responsibility Board
Suite 300
372 St. Peter Street
St. Paul, Minnesota 55102

GERALD E. MAGNUSON
Chairman
MARY H. DAVIES
KELTON GAGE
JEANNE GIVENS
ARTHUR N. GOODMAN
JAMES T. HALE
ROBERT F. HENSON
JARED HOW
CHARLES T. HVASS
KENNETH F. KIRWIN
HERBERT P. LEFLER
GREER E. LOCKHART
WILLIAM I. NOVAK
WILLIAM T. O'CONNOR
RICHARD L. PEMBERTON
CLARENCE W. PETERSON
STEPHEN C. RATHKE
ALAN K. RUVELSON
RONALD P. SMITH
WILLIAM P. VAN EVERA
SHERMAN WINTHOP
MARTHA ZACHARY

MICHAEL J. HOOVER
Administrative Director
BRUCE E. MARTIN
Assistant Administrative
Director
RICHARD C. BAKER
Staff Attorney
612-296-3952

January 13, 1981

PERSONAL AND CONFIDENTIAL

Mrs. Mary H. Davies
1001 South 10th Street
Moorhead, Minnesota 56560

Mr. James T. Hale
General Mills, Inc.
P. O. Box 1113
Minneapolis, MN. 55440

Mr. Kelton Gage
Attorney at Law
Box 3049
Mankato, MN 56001

Mr. Richard L. Pemberton
Attorney at Law
Law Office Building
Fergus Falls, MN 56537

Re: Panel Hearing—January 16, 1981
Attorney William C. Hoffman

Dear Panel Members:

Enclosed for your review prior to the Panel Hearing on Friday, January 16, 1981, is a Supplementary Complaint

and Notice of Hearing in the above-entitled matter, dated January 12, 1981.

Very truly yours,

/s/ Mike
Michael J. Hoover
Administrative Director

MJH:rk
Enclosure
cc: Mr. Gerald E. Magnuson
Mr. Robert F. Henson
Mr. William C. Hoffman

Constitutional Amendments

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI—JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT VII—CIVIL TRIALS

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII—EXCESSIVE BAIL, FINES, PUNISHMENTS

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rules on Lawyers Professional Responsibility

RULE 1. DEFINITIONS

As used in these Rules:

(1) "Board" means the Lawyers Professional Responsibilty Board.

(2) "Chairman" means the Chairman of the Board.

(8) "Panel" means a panel of the Board.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(c) Duties. The Board shall have supervisory authority over the administration of these Rules, shall advise and assist the Director in the performance of his duties, and may, from time to time, issue opinions on questions of professional conduct. The Board may elect a Vice-Chairman and specify his duties, and may elect an Executive Committee and authorize it to perform specified duties of the Board between Board meetings.

RULE 5. DIRECTOR

(b) Duties. The Director shall be responsible and accountable to the Board and to this Court for the proper

administration of these Rules. The Director shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system and shall make such other reports to this Court as it may order.

RULE 8. DIRECTOR'S INVESTIGATION

(4) Submission to Panel. The Director shall submit the matter to a Panel under Rule 9 if:

i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted;

(ii) The lawyer makes a demand under subdivision (c) (2) (iii);

(iii) The lawyer consents or a Panel determines that the lawyer has violated conditions under subdivision (c) (3); or

(iv) A Panel chairman so directs upon an appeal under subdivision (d).

RULE 9. PANEL PROCEEDINGS

(a) Charges; setting pre-hearing meeting. If the matter is to be submitted to a Panel, the Director shall prepare charges of unprofessional conduct, assign them to a Panel by rotation, schedule a prehearing meeting, and notify the lawyer of:

(1) The charges;

(2) The name, address, and telephone number of the Panel chairman and vice-chairman;

(3) The time and place of the pre-hearing meeting; and

(4) The lawyer's obligation to appear at the time set unless the meeting is rescheduled by agreement of the parties or by order of the Panel chairman or vice-chairman.

(b) Admission of charges. The lawyer may, if he so desires:

(1) Admit some or all charges; or

(2) Tender an admission of some or all charges conditioned upon a stated disposition.

If a lawyer makes such an admission or tender, the Director may proceed under Rule 10 (b).

(c) Request for admission. Either party may serve upon the other a request for admission. The request shall be made before the pre-hearing meeting or within 10 days thereafter. The Rules of Civil Procedure for the District Courts applicable to requests for admissions, govern except that the time for answers or objections is ten days and the Panel chairman or vice-chairman shall rule upon any objections. If a party fails to admit, the Panel may award expenses as permitted by the Rules of Civil Procedure for the District Courts.

(d) Deposition. Either party may take a deposition as provided by the Rules of Civil Procedure for the District Courts. A deposition under this Rule may be taken before the pre-hearing meeting or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the deposition. The lawyer shall be denominated by initials in any District Court proceeding.

(e) Pre-hearing meeting. The Director and the lawyer shall attend a pre-hearing meeting. At the meeting:

(1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing;

(2) Each party shall mark and provide the other party a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the pre-hearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Rules of Procedure for the District Courts. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the Panel's permission; and

(3) The parties shall prepare a pre-hearing statement.

(f) Setting Panel hearing. Promptly after the pre-hearing meeting, the Director shall schedule a hearing by the Panel on the charges and notify the lawyer of:

(1) The time and place of the hearing;

(2) The lawyer's right to be heard at the hearing; and

(3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled by agreement of the parties or by order of the Panel chairman or vice-chairman. The Director shall also notify the complainant, if any, of the hearing's time and place. The Director shall send each Panel member a copy of the charges, of any stipulations, of the pre-hearing statement, and, unless the parties agree or the Panel chairman or vice-chairman orders to the contrary, of all documentary exhibits marked at the pre-hearing meeting.

(g) Form of evidence at Panel hearing. The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:

(1) The lawyer;

(2) A complainant who affirmatively desires to attend; and

(3) A witness whose testimony the Panel chairman or vice-chairman authorized for good cause.

If testimony is authorized, it shall be subject to cross-examination and the Rules of Evidence and a party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Rules of Civil Procedure for the District Courts. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by initials in any district court proceeding.

(h) Procedure at Panel hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

(1) The Chairman shall explain that the hearing's purpose is to determine whether there is probable cause to believe that public discipline is warranted on any charge, and that the Panel will terminate the hearing whenever it is satisfied that there is or is not such probable cause (or, if the Director has issued an admonition under Rule 8(c)(2), that the hearing's purpose is to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court);

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which he proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments; and

(6) The Panel shall either recess to deliberate or take the matter under advisement.

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10, the Director shall file with this Court a petition for disciplinary action. The petition shall set forth the unprofessional conduct charged.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

(a) Referee. This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action.

(b) Conduct of hearing before referee. Unless this Court otherwise directs, the hearing shall be conducted in accordance with the rules of civil procedure applicable to district courts and the referee shall have all the powers of a district court judge.

RULE 15. DISPOSITION: PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

(1) Disbar the lawyer;

(2) Suspend him indefinitely or for a stated period of time;

(3) Order the lawyer to pay a fine, costs, or both.

(4) Place him on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;

(5) Reprimand him;

(6) Make such other dispositions as this Court deems appropriate; or

(7) Dismiss the petition for disciplinary action.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(b) Disciplinary proceedings.

(1) *Conduct previously considered.* Proceedings under these Rules may be based upon conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, even if it was determined in the previous proceedings that discipline was not warranted or that the proceedings should be discontinued after the lawyer's compliance with conditions.

RULE 25. REQUIRED COOPERATION

(a) Lawyer's duty. It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director or his staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

(1) Furnish designated papers, documents or tangible objects;

(2) Furnish in writing a full and complete explanation covering the matter under consideration;

(3) Appear for conferences and hearings at the times and places designated.

(b) Grounds of discipline. Violation of this rule is unprofessional conduct and shall constitute a ground for discipline.

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ALEXANDER L. STEVAS,
CLERK

No. 82-1779

IN THE

Supreme Court of the United States

October Term, 1982

William Charles Hoffman

vs.

Minnesota Lawyers Professional Responsibility Board

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

WILLIAM C. HOFFMAN
P.O. Box B
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(612) 770-6582
Petitioner Pro Se

MICHAEL J. HOOVER
Director of Lawyers Professional Responsibility
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St. Paul, Minnesota 55101
(612) 296-3952
Respondent

1983—Northwest Brief Printing Co., 3010 2nd St. No., Minneapolis 55411—588-7506

QUESTION PRESENTED

Should the petition for the writ of certiorari be denied because the Court lacks jurisdiction due to mootness and petitioner's lack of standing?

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IN THE

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No. 82-1779

William Charles Hoffman

vs.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PARTIES TO THE PROCEEDING

William C. Hoffman is the petitioner in this proceeding. All references to petitioner in this brief refer to petitioner Hoffman. The Lawyers Professional Responsibility Board (Board) is the respondent. The Director of Lawyers Professional Responsibility (Director) is the administrator of the Minnesota disciplinary system and is appearing on behalf of the Board.

For clarity, it should be noted that the title of the parties in the Minnesota disciplinary proceeding differ from the titles of the parties in this proceeding. The parties in the Minnesota disciplinary proceeding were the Director and Hoffman, a Minnesota lawyer (respondent). The Minnesota Civil Liberties Union appeared in an amicus curiae capacity

on behalf of respondent Hoffman. All pleadings set forth in the appendix to the petition for a writ of certiorari refer to the Director and respondent Hoffman.

While not a party, the Minnesota Supreme Court has been provided with three copies of the brief in opposition.

OPINIONS BELOW

The petitioner has included in the appendix to the petition the findings of fact, conclusions of law and recommendation of the referee, as well as the amended order of the Minnesota Supreme Court dismissing the Minnesota disciplinary proceeding against petitioner.

JURISDICTION

This Court lacks subject matter jurisdiction to grant the petition for a writ of certiorari because the Minnesota disciplinary proceeding against petitioner has been dismissed rendering the matter moot for purposes of federal judicial review. Petitioner lacks standing to seek federal judicial review of other Minnesota disciplinary proceedings to which he is not a party.

STATEMENT OF THE CASE

In April, 1980, a complainant filed an ethics complaint against the petitioner. After an investigation, the Director issued a warning pursuant to Rule 8 of the Rules on Lawyers Professional Responsibility (RLPR). The petitioner demanded a hearing on the warning. Charges of unprofessional conduct were presented to a panel of the Lawyers Professional Responsibility Board (panel) on January 16, 1981. Pursuant to Rule 9, RLPR, the panel directed the filing of a petition for public discipline against respondent.

On April 7, 1981, petition for disciplinary action was filed in the Minnesota Supreme Court. The petitioner filed an answer. The matter was heard before a referee, a Minnesota county court judge, on May 11 and 12, 1982. On December 29, 1982, the referee recommended to the Minnesota Supreme Court that discipline was not warranted. The Director concurred with the referee's recommendation and joined in the referee's recommmendation that discipline was not warranted. On February 16, 1983, the Minnesota Supreme Court dismissed the proceeding against petitioner. There has been a full hearing on this matter. All matters have been dismissed. No disciplinary action was taken against petitioner. There is no action pending against petitioner. There is no legal proceeding from which to seek review.

ARGUMENT

The disciplinary proceeding against the petitioner was dismissed. All issues were resolved in favor of petitioner. There is no case or controversy between the parties. The petition for writ of certiorari should be denied because the Court lacks jurisdiction due to mootness and lack of standing by petitioner.

A. Mootness

Article III of the Constitution limits the judicial power of the United States to the resolution of cases and controversies. This fundamental constitutional principle has been upheld in numerous decisions, most recently in *Valley Forge College v. Americans United,* 454 U.S. 464 (1982). The district court had dismissed the suit because the p'ain-

tiff lacked standing. The Court of Appeals, Third Circuit, reversed the dismissal. The Supreme Court reversed the Third Circuit holding the federal courts lacked jurisdiction because there was no case or controversy. Justice Renquist, writing for the majority, set forth in detail the constitutional basis of the case or controversy jurisdictional requirement:

> Article III of the Constitution limits the "judicial power" of the United States to the resolution of "cases" and "controversies." The constitutional power of the federal courts cannot be defined, and indeed has no substance, without reference to the necessity "to adjudge the legal rights of litigants in actual controversies." (citation omitted). The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process. The judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, . . . "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy."

Valley Forge, at 471 (citing *Liverpool Steamship Co. v. Commissioners of Emigration,* 113 U.S. 33, 39 (1885) and *Chicago and Grand Trunk R.R. Co. v. Wellman,* 143 U.S. 339, 345 (1892)).

The Court, in defining case and controversy, has adopted a self-imposed jurisdictional limit. The Court has estab-

lished that it has no power to decide moot cases. Mootness, once proved, will prevent the decision of the case on the merits. *U.S. v. Felin & Co.*, 334 U.S. 624, 640 (1948). *See also*, Note, *Cases Moot on Appeal: A Limit on the Judicial Power*, 103 U. Pa. L. Rev. 772 (1955).

Mootness results when an event occurs which renders it impossible for the Supreme Court, if it should decide to grant the case in favor of the plaintiff, to grant him any effectual relief whatsoever. *Mills v. Green*, 159 U.S. 651 (1895). A case is moot when a party has no legal interest in the outcome. To constitute a case in controversy there must be adverse parties with real interests whose contentions are submitted to the Court for adjudication. *Weinstein v. Bradford*, 423 U.S. 147 (1975). *Midland-Guardian of Pensacola, Inc. v. Carr*, 425 F.2d 793 (5th Cir. 1970). The dismissal of the disciplinary action against the petitioner rendered his case moot.

B. Lack of Standing

Petitioner lacks standing to seek the requested relief. The relief petitioner seeks is not the resolution of an actual case or controversy. Rather he seeks an advisory opinion regarding the nature of the Minnesota disciplinary proceedings. Petitioner does not assert that in his disciplinary proceeding the Minnesota Supreme Court rendered a decision in conflict with federal law. Nor does he claim a distinct injury that is likely to be redressed if the requested relief is granted. *Valley Forge*, at 472. Rather he claims the Minnesota Supreme Court, in Minnesota disciplinary proceedings to which petitioner was not a party has erroneously interpreted federal law. Respondent asks the Court to review

these decisions as well as several of the Rules on Lawyers Professional Responsibility[1] adopted by the Minnesota Supreme Court to determine if any of these violate federal law. Such abstract questions of judicial interpretation are clearly beyond the scope of federal judicial power.

> In addition, even when the plaintiff has alleged redressable injuries sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating "abstract questions of wide public significance" which amount to "generalized grievances," pervasively shared and most appropriately addressed in the representative branches.

Id. at 474-475 (citing *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975)).

This recent opinion affirms the Court's recognition that it cannot resolve the merits of the lawsuit until it first determines it has jurisdiction to review the matter.

> Article III obligates a federal court to act only when it is assured of the power to do so, that is, when it is called upon to resolve an actual case or controversy. Then, and only then, may it turn its attention to other constitutional provisions and presume to provide a forum for the adjudication of rights.

Id. at 476 n. 13 (citing *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 345 (1936) (Brandeis, J., concurring)).

The Court recognizes that its power of review is not unlimited.

---

[1]During the pendency of the Minnesota disciplinary proceeding, the Minnesota Rules on Lawyers Professional Responsibility were significantly amended. Petitioner seeks review of Rules, such as Rules 8, 9 and 25, which have been repealed, substantially amended, or adopted since initiation of disciplinary proceedings against petitioner.

> Article III, which is every bit as important in its circumscription of the judicial power of the United States as in its granting of that power, is not merely a troublesome hurdle to overcome if possible so as to reach the "merits" of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787....

Id. at 476.

CONCLUSION

The Minnesota disciplinary action was dismissed. The matter is moot. No case or controversy exists between the parties. Therefore, the Court lacks jurisdiction to grant the relief sought. Respondent asks that the Court deny petitioner's petition for a writ of ceriorari.

Respectfully submitted,

MICHAEL J. HOOVER
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444 Lafayette Road, 4th Floor
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(612) 296-3952
Respondent

Office - Supreme Court, U.S.
FILED
JUN 7 1983
ALEXANDER L. STEVAS,
CLERK

NO. 82-1779

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

IN THE MATTER OF WILLIAM CHARLES HOFFMAN,

PETITIONER.

REPLY BRIEF REGARDING PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

WILLIAM C. HOFFMAN
P. O. Box B
Lake Elmo, Minnesota 55042
(612) 770-6582
Petitioner Pro Se

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 82-1779

IN THE MATTER OF WILLIAM CHARLES HOFFMAN,

Petitioner.

ARGUMENT

The Respondent contends that the Amended Order of the Minnesota Supreme Court dismissing this case renders the case moot.

However, the dismissal violated the Petitioner's rights to due process, and he so alleged in his Answer to Motion of Director to Dismiss.

Rule 14 (e) of the Rules on Lawyers Professional Responsibility states:

> "(e) Hearing before Court. This Court within ten days of the referee's findings, conclusions, and recommendations, "shall" set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. The matter shall be heard upon the record, briefs, and arguments."

This Rule is mandatory, not discretionary.

In his Answer to Motion of Director to Dismiss, the Petitioner specifically referred the Minnesota Supreme Court to Rule 14 (e) and he also specifically alleged that he was entitled to due process under the United States Constitution, as well as the Minnesota State Constitution, and dismissal of the case by the Minnesota Supreme Court would violate his rights to due process. (A-62).

In spite of this, the Minnesota Supreme Court did dismiss the case, thereby violating the Petitioner's rights to due process.

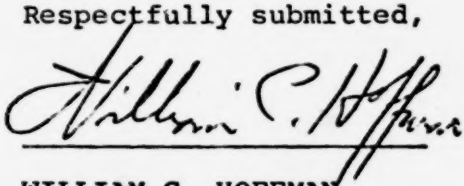
Since the Petitioner could not seek further redress in the Minnesota Courts,

his only right to redress was to the United States Supreme Court.

The dismissal by the Minnesota Supreme Court, rather than rendering this case moot, gave rise to an additional violation of the Petitioner's rights to due process under the laws of the United States, and this case presents important Federal questions regarding the rights of a citizen of the United States that only the United States Supreme Court can resolve.

Therefore, the Petitioner respectfully requests this Court to issue a Writ of Certiorari in this case.

Respectfully submitted,



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